TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1927

No. [redacted] 106

UNITED STATES STEEL PRODUCTS COMPANY, CLAIMANT AND OWNER OF S. S. "STEEL TRADER," ET AL., PETITIONERS,

vs.

DONALD J. ADAMS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITION FOR CERTIORARI FILED AUGUST 24, [redacted]

CERTIORARI GRANTED SEPTEMBER 5, 1928

(28,178)

(32,135)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 568

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vs.

DONALD J. ADAMS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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[fol. 2]

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA

DONALD J. ADAMS

vs.

S. S. "STEEL TRADER"

No. 16970

LIBEL—Filed May 24, 1922

To the Honorable Rufus E. Foster, Judge of the United States District Court, Eastern District of Louisiana, New Orleans Division, in Admiralty:

The libel of Donald J. Adams, late seaman against the Steamship "Steel Trader" her owners, Master and Agent, her engines, boilers, tackle, boats, furniture and apparel in a cause of wages, civil and maritime, alleges as follows:

I

That your libelant Donald J. Adams was employed on or about the 26th day of November in the year 1921 as an oiler on board the Steamship Steel Trader, having signed articles on or about the same date at the rate of wages of Eighty Dollars ($80.00) per month for a round trip from New Orleans to Port Arthur, Texas, thence to Greece and East Indian Ports and return to New Orleans.

[fol. 3] II

That the Steamship Steel Trader, was then and now is owned by the United States Steel Product Co. a New Jersey corporation, doing business and having its head office in the City of New York from which port said "Steel Trader" hailed.

III

That your libelant sailed from the port of New Orleans on board the said vessel on or about the 10th day of December, 1921, arriving at Port Arthur on or about the 12th day of December, 1921, where libelant was discharged without just cause or right by the Master of said Steel Trader and paid off up to the 12th day of December, 1921, your libelant refusing to sign the usual and customary mutual release, said discharging of libelant was in violation of the articles of said vessel and as result of said dismissal and paying off your libelant has been deprived of his just wages at the rate of Eighty Dollars ($80.00) per month from the 12th day of December up to and including the 19 day of May, 1922, the arrival date of said vessel at the Port of New Orleans, said wages amounting to four hundred and fourteen dollars 50 xx and subsistence from Dec. 12, 1921, at $2.50 per day to May 19th, 1922.

IV

That the Steamship Steel Trader which your libelant is informed and believes is also the property of the said United States Steel Product Company, whereof Capt. Wilson whose first name is unknown to your libelant is, or lately was Master, her engines, boilers, tackel, boats, furni-
[fol. 4] ture and apparel is now lying in the Mississippi River at the dock of United States Army Base at New Orleans and within the jurisdiction of this Honorable Court.

V

That during the whole time your libelant was in the service of the Steamship "Steel Trader," he faithfully performed his duties on board the said vessel and was dismissed against his will and without just cause and is entitled to receive his wages up to and including the day of signing off at the Port of New Orleans having signed ship articles for a round trip from New Orleans to Greece and East Indian Ports and return to New Orleans.

VI

That libelant has demanded his said wages of said owner and agent and said demands have been refused.

VII

That all and singular the premises are true and within the admiralty and martime jurisdiction of the United States and this Honorable Court.

Wherefore the libelant prays that process in due form of law according to the course of this Honorable Court in a cause of admiralty and martime jurisdiction issued against the Steamship "Steel Trader" her engines, boilers, tackle, boats, furniture and apparel and that all persons having or pretending to have any right title or interest therein may be cited to appear and answer all and singular the matters aforesaid and that this Honorable Court will be [fol. 5] pleased to decree to the libelant the judgment of the said amount due to libelant on his contract as appears by said articles signed at the City of New Orleans on or about the 26th day of November, 1921, with costs and that the said Steamship "Steel Trader" may be condemned and sold to pay the same and that the libelant may have such other and further relief as in law and justice may be entitled to receive.

(Signed) Donald J. Adams, Libelant. Eugene S. Hayford, Proctor for Libelant.

Duly sworn to by Donald J. Adams. Jurat omitted in printing.

[fol. 6] In United States District Court

Order to Issue Admiralty Process

Let admiralty process issue as prayed for.

New Orleans, La., May 24, 1922.

(Signed) H. J. Carter, Clerk.

IN UNITED STATES DISTRICT COURT

ADMIRALTY WARRANT AND MARSHAL'S RETURN—Filed May 25, 1922

Seaman's Wages

Eugene S. Hayford, Proctor

The President of the United States of America to the Marshal of the Eastern District of Louisiana or to his lawful deputy, Greeting:

You are hereby commanded to seize, and into your possession take, the Steamship "Steel Trader," her engines, boilers, tackle, boats, furniture and apparel, now libeled by Donald J. Adams, for the cause set forth in the Libel now pending in the District Court of the United States for the Eastern District of Louisiana (New Orleans Division), that you do cite and admonish the owner, or owners, and all and every other person, or persons, having, or pretending to have, any right, title, or interest in or to the same, to be and appear before a District Court of the United States for the District aforesaid, to be holden at the City of New Orleans, on the 19th day of June, A. D. 1922, to show cause, if any they have or can, why the said Steamship "Steel Trader," her engines, boilers, tackle, boats, furniture and apparel, should not be condemned and sold agreeably to the prayer [fol. 7] of Libelant; and how you have executed this warrant that you make return according to law.

Witness the Honorable Rufus E. Foster, Judge of said Court, at New Orleans, this 24th day of May, 1922, and the 146th year of the Independence of the United States.

(Signed) H. J. Carter, Clerk, by E. Wendling, Deputy Clerk. (Seal.)

Clerk's Office. A true copy. New Orleans, La., May 24, 1922. (Signed) E. Wendling, Deputy Clerk. (Seal.)

Received by U. S. Marshal, New Orleans, La., 5 24 22, and on the same day, month and year I seized and took into my custody the Steamship "Steel Trader," her tackle, machinery, engines, boilers, furniture and apparel, as she

lay in the Mississippi River, Port of N. O. and served the original of which this is a certified copy on 2nd Mate Nils Roestad whom I found in charge by handing same to him in person on board said S. S. Steel Trader at the time I seized her.

(Signed) Victor Loisel, U. S. Marshal, by H. C. Mosely, Deputy.

[fol. 8] IN UNITED STATES DISTRICT COURT

CLAIM—Filed May 26, 1922

And now J. A. Rylander, intervening for the interest of United States Steel Products Company, domiciled and doing business at New York, N. Y., appears before the Court and makes claim to the Steamship "Steel Trader" her boats, machinery, tackle, apparel, and furniture, as the same are attached by the Marshal under process of this Court at the instance of Donald J. Adams, and the said J. A. Rylander avers that he was in possession for said U. S. Steel Products Co. of said Steamship "Steel Trader" her boats, machinery, tackle, apparel, and furniture at the time of the attachment hereof, and said U. S. Steel Products Co., is the true and bona fide owner of said Steamship "Steel Trader," her boats, machinery, tackle, apparel, and furniture, and that no other person is the owner thereof, and that the said J. A. Rylander is the master of said Steamship, and the true and lawful bailee thereof for the said owner.

Wherefore he prays to be admitted to defend accordingly, and that the Honorable Court will be pleased to decree a restitution of said property to him and otherwise right and justice to administer in the premises.

(Signed) J. A. Rylander, Master S. S. "Steel Trader." Denegre, Leovy & Chaffe, Jas. Hy. Bruns, Proctors for Claimant.

[fols. 9 & 10] J. A. Rylander, being duly sworn, deposes and says that all the allegations of the foregoing claim are true and correct.

(Signed) J. A. Rylander.

Sworn to and subscribed before me at New Orleans, Louisiana, on this, the 26th day of May, A. D. 1922. (Signed) Thos. E. Furlow, Notary Public. (Seal.)

Release bond for $1,000, filed May 26th, 1922, omitted in printing.

[fol. 11] In United States District Court

Exceptions to Libel—Filed August 2, 1922

Now into Court comes the United States Steel Products Company, owner and claimant of the Steamship "Steel Trader," her engines, boilers, tackle, apparel and furniture, and for exception to the libel herein filed, alleges and shows as follows:

That the said libel and the allegations thereof are too vague, indefinite and uncertain to allow exceptor properly and accurately to answer thereto, and more particularly in specification of said exception exceptor shows:

That libelant does not allege in his libel the particulars of his discharge, and does not allege whether or not he was paid any sums or any of his wages when discharged, and if so, what sums or how much wages he was paid.

Wherefore exceptor prays that after due proceedings had, these exceptions may be maintained and libelant's libel may be dismissed hence at his cost, and exceptor further prays for such further orders and relief in the premises as the justice of the cause may require.

(Signed) Denegre, Leovy & Chaffe, Jas. Hy. Brunn, Proctors for Exceptor.

Aug. 1, 1922.

[fol. 12] *Duly sworn to by Jas. Hy. Brunn. Jurat omitted in printing.*

In United States District Court

Answer—Filed November 30, 1925

Now into Court comes the United States Steel Products Company, claimant and respondent, and for answer to the libel and complaint of Donald J. Adams herein, articulately alleges and denies as follows:

[fol. 13] I

For answer to Article No. II, respondent admits the allegations of fact therein contained except that libelant was employed on November 27th, 1921, and signed the Shipping Articles on November 29th, 1921.

II

For answer to Article No. II, respondent admits the allegations of fact therein contained.

III

For answer to Article No. III, respondent admits that libelant sailed from the Port of New Orleans on the Steamship "Steel Trader" on December 8th, 1921, arriving at Port Arthur, Texas, on or about December 12th, 1921, where libelant was discharged and paid off up to and including the 12th day of December, 1921, but respondent denies all of the other allegations of fact contained in said Article.

IV

For answer to Article No. IV, respondent admits the allegations of fact therein contained except that John A. Rylander was the Master of the Steamship "Steel Trader."

V

For answer to Article No. V, respondent denies all of the allegations of fact therein contained.

[fol. 14] VI

For answer to Article No. VI, respondent admits the allegations of fact therein contained.

VII

For answer to Article No. VII, respondent denies that all and singular or all or singular the premises are true but admits that they are within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

VIII

And now for further answer to the libel herein, respondent shows the truth to be and so alleges:

That on December 5th, 1925, there was inserted a certain wage provision as one of the voyage clauses in the Shipping Articles of the Steamship "Steel Trader" which had been drafted by and inserted in the Articles with the consent of the United States Shipping Commissioner and when it was read to the crew by the Shipping Commissioner, libelant herein, Donald J. Adams, refused to consent thereto and a note to that effect was made upon the Articles, the original Shipping Articles being referred to as part hereof the same as if incorporated herein.

IX

That as libelant, Donald J. Adams, continued to refuse his consent and adherence to said clause which became a part of the Shipping Articles, when the vessel arrived at Port Arthur, Texas, on December 12th, 1921, he [fol. 15] was discharged and paid off by the Master of the Steamship "Steel Trader" under and in accordance with the laws of the United States so made and provided and, more particularly, United States Revised Statute 4527 which provides:

"Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the Master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the Court hearing the case, of having been improperly discharge, recover such compensation as if it were wages duly earned."

X

That when libelant was discharged and paid off at Port Arthur, Texas, on December 12th, 1921, he was paid an extra month's wages of $80.00 in addition to the wages earned by him, making in all $120.87, for which libelant gave the Master of the Steamship "Steel Trader" a receipt, which receipt is marked "Steel Trader No. 1" and is annexed hereto as part hereof the same as if incorporated herein in full.

XI

That libelant was properly discharged from said Steamship "Steel Trader" for refusing and continuing to refuse to agree to the Shipping Articles and clauses therein inserted by and with the consent of the United States Ship-
[fol. 16] ping Commissioner at New Orleans, but respondent shows that even if said discharge was not justified and was without fault on libelant's part, respondent has complied with all the laws of the United States for such cases, and more particularly United States Revised Statute 4527, in paying to libelant at time of discharge one extra month's wages in the sum of $80.00 as provided by said statute and has discharged all of its duties and liabilities to libelant by such payments and is not responsible to libelant in any other and further sum.

XII

That respondent, as the owner and claimant of the Steamship "Steel Trader" has complied with all of the conditions and agreements by it made in the Shipping Articles and under the laws of the United States.

Wherefore respondent prays that after due proceedings had there may be judgment herein dismissing hence libelant's libel at its costs and respondent further prays for such other and further relief as may be justified in the premises.

(Signed) Denegre, Leovy & Chaffe, Proctors for Respondent.

Nov. 30, 1925.

Duly sworn to by Jas. Hy. Braus. Jurat omitted in printing.

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[fol. 17] Minute entry of argument and submission November 30, 1925, omitted in printing.

[fol. 18] In United States District Court

Statement of Evidence Filed November 20, 1925

Note of Evidence

Be it remembered that when on the 30th day of November, 1925, the above numbered and entitled cause was called for trial before this Honorable Court, the Proctors for the United States Steel Products Company, respondent and claimant, produced, offered and filed in open Court the following documents in evidence on behalf of respondent and claimant:

1. The original answer of the United States Steel Products Company, claimant and respondent, to the libel and complainant of Donald J. Adams; together with all exhibits annexed thereto.

2. The deposition of John A. Rylander, a witness on behalf of the claimant and respondent, said testimony being taken by consent before E. B. Glenny, Notary Public, at the office of Denegre, Leovy & Chaffe, 724 Whitney Central Building, New Orleans, Louisiana, on Thursday, June 15th, 1922, together with all the exhibits mentioned therein and filed therewith and annexed thereto and more [fol. 19] particularly the original Shipping Articles identified by the witness, which Articles are on file in this Honorable Court in the suit of Charles Nott et als. vs. the Steamship "Steel Trader," No. 16,989 of the docket of this Court, and for the purposes of their introduction claimant and respondent includes the record in that suit in its offer in this note of evidence, and the original log of the Steamship "Steel Trader," and the original receipt identified by the witness and marked "Steel Trader" No. 1.

TESTIMONY ON BEHALF OF CLAIMANT, TAKEN OUT OF COURT—Filed November 30th, 1925

Maritime Division

Testimony taken in the above numbered and entitled case by consent before E. B. Glenny, notary public, at the office of Messrs. Denegre, Leovy & Chaffe, 724 Whitney-Central Building, New Orleans, La., on Thursday, June 15th, 1922, on behalf of claimant and respondent

APPEARANCES OF COUNSEL

Messrs. Denegre, Leovy & Chaffe (Mr. Bruns) for claimant & respondent.

Mr. E. S. Hayford for libelant.

STIPULATION RE TESTIMONY

It is hereby stipulated by the Proctors for the respective parties that signing, sealing and certification are waived, [fol. 20] the opposing side to be furnished with a copy of the testimony, stenographer's fees to be taxed as costs.

JOHN A. RYLANDER, being duly sworn by E. B. Glenny, notary public, testified as follows:

Direct examination.

By Mr. Bruns:

Q. Will you give your name and occupation?

A. John A. Rylander, Master Mariner, Steamship Steel Trader.

Q. What is your home address,—where do you get your mail?

A. Norton, Lilly & Company, New Orleans, Louisiana.

Q. How long have you been Master of the S. S. Steel Trader?

A. Since November 7th, 1921.

Q. Were you the Master of the Steel Trader on the voyage out of New Orleans in November, 1921?

A. Yes, sir.

Q. When did you leave New Orleans on that trip?
A. I have to refer to the log book,—December 8th, 1921.
Q. You left New Orleans, December 8th, 1921?
A. Yes, sir.
Q. When did you sign on the crew?
A. We signed on the crew on November 29th.
Q. Have you the original shipping article with you?
A. Yes, sir.
Q. These are the original articles I have here?
A. Yes, sir.
[fol. 21] Q. And they are kept by the United States Shipping Commissioner at the Customs House in New Orleans, La.?
A. Yes, sir.

Mr. Bruns: In connection with the testimony of the witness Proctors for the Claimant offer, produce and file in evidence the original Shipping Articles of the S. S. Steel Trader.

Q. Have you the original log left with the United States Shipping Commissioner?
A. Yes, sir.
Q. Let's see that?
A. Yes, sir.
Q. That also stays with the United States Shipping Commissioner.
A. Yes, sir.

Mr. Bruns: Proctors for the Claimant offer, produce and file in evidence in connection with the testimony of the witness the original log which speaks for itself.

Mr. Hayford:

Q. That is a copy of the original log?
A. That is the official log.
Q. This is not the log filed with the Shipping Commissioner, this is a copy?
A. No, sir.
Q. This is the original log filed with the Shipping Commissioner?
A. Yes, sir.

Q. How did you get it in your possession now?
A. I receipted for them.

[fol. 22] Mr. Bruns:

Q. Was Adams on that voyage?
A. Yes, sir.
Q. And he signed on in these articles that you are speaking of?
A. Yes, sir.
Q. When did he leave your ship, and under what circumstances?
A. He left the ship at Port Arthur, Texas, on December 12, 1921.
Q. Did you pay him any money at that time?
A. Yes, sir.
Q. What did you pay him, and have you a receipt for it?
A. Yes, sir, I paid him his wages from November 27th to December 12th, sixteen days, and also paid him an extra month's wages $80.00, a total of $122.67.
Q. Have you a receipt for that amount?
A. Yes, sir.
Q. That was signed by Adams in your presence?
A. Yes, sir.

Mr. Bruns: Proctors for the Claimant offer, file and produce in evidence the receipt, marking same Steel Trader No. 1.

Q. What wages per month did Adams receive, this $80.00 I see here?
A. Yes, sir.
Q. That is shown by the Shipping Articles?
A. Yes, sir.
Q. Before whom was Adams paid off?
A. I paid him before the United States Shipping Commissioner at Port Arthur.
Q. Texas?
[fol. 23] A. Yes, sir.
Q. On the day that you speak of?
A. Yes, sir.

Cross-examination.

By Mr. Hayford:

Q. Why was Adams paid off?
A. Because he would not agree to the wage scale.

Mr. Bruns:

Q. Adams did not wish to be paid off did he?
A. No, sir.

JOHN A. RYLANDER, being recalled by Mr. Hayford, testified:

Q. When did you clear at New Orleans, what date, I do not mean the date you sailed, I mean the date you cleared, —can you not associate that with the signing on the crew?
A. I can associate it with my sailing, I think it was the 7th of December.
Q. Are you quite positive about that?
A. Not absolutely.
Q. You have no way of fixing it by the log entry?
A. I have the log book here but I did not have any entry in it about clearing or sailing.
Q. But your recollection is that it was the 7th?
A. Yes, sir.

By Mr. Bruns:

Q. What is your recollection of the date that stipulation was put in the shipping articles?
[fol. 24] A. December 5th, I have it here, I have an entry of it here.
Q. You have an entry in the log on that?
A. Yes, sir.
Q. What date does the log show?
A. December 5th.

EXHIBIT—"STEEL TRADER No. 1"—Filed November 30, 1925

Form No. A-81

Isthmian Steamship Lines, 39 Cortlandt St., New York, U. S. A.

Discharge Pay Receipt

Steel Trader No. 1

No. 2

Paid off at Port Arthur, Texas (Port); date: Dec. 12, 1921.

Services Rendered S. S. Steel Trader

Name: D. J. Adams; rating, Oiler; is entitled to wages from Nov. 27 to Dec. 12, 1921, — Mos. 16 days at $80 per mo	$42 67
Overtime from Extra months wages (must be Supported by Daily Record)	80 00
Total earnings	$122 67

[fol. 25] Deductions

Allotments: — months at $— per month	
Advances	
Slop account as per log book	1 80
Total Deductions	$1 80
Balance Due	$120 87
Fines	

Officer in charge: (Signed) Wm. A. Bruesand.

Attest: (Signed) John A. Rylander, Master.

Certified: (Signed) A. A. Ginter, Act. U. S. Shipping Commissioner, U. S. Consul. (Seal.)

Received above amount. (Signed) D. J. Adams.

This voucher is not transferable. No alterations allowed.

[fol. 26] IN UNITED STATES DISTRICT COURT

STIPULATION RE PRAECIPE AND TRANSCRIPT—Filed January 18, 1925

No. 16970

It is agreed by and between undersigned proctors for all parties herein, that in making up the transcript of record herein there shall be omitted from the praecipe and the printed record the following original exhibits annexed to the answer filed herein and the deposition taken and filed herein on behalf of claimant and respondent:

2. The original Shipping Articles of the Steamship "Steel Trader."

1. The original log book of the Steamship "Steel Trader."

it being stipulated and agreed that the only material parts of said exhibits are as follows:

First exhibit: Entry in Log Book reading as follows:

"December 12, 1921, Port Arthur.

I have this day paid off before the United States Shipping Commissioner, Donald J. Adams, oiler, paying 16 days at $80.00 and one month's wages as per law, amounting to $120.87.

John A. Rylander, Master. Donald J. Adams, Oiler."

[fol. 27] Second exhibit: Original shipping articles, the words and figures on page 1 thereof reading as follows:

"Office of U. S. Shipping Commissioner of the Port of New Orleans

November 29, 1921.

It is agreed between the Master and seamen or mariners of the S. S. "Steel Trader" of New York of which J. Rylander is at present Master, or whoever shall go for Master, now bound from the Port of New Orleans, to Pireaus, Greece, and East Indian Ports, and such other ports and places in any part of the world as the Master may direct and back to a final port of discharge and or loading ports

on the Atlantic or Gulf Coast in the United States, for a term not exceeding 12 calendar months;"

and the following clause in the following words and figures on page 1 of said Articles reading as follows:

"Should any changes in the scale of wages of crews employed on vessels whose owners are members of the American Steamship Owners Association, be made after the departure of this vessel, such scale of wages shall prevail on this vessel from date new scale is put into effect by the American Steamship Owners Association."

this clause being typewritten on a slip of paper and pasted on the foot of page 1 of the Articles and on said slip there appears written in ink the following words and figures:

"Members of Lines 7 and 24 do not agree to above wage adjustment.

J. D. P. D. S. C."

[fol. 28] and it is stipulated and agreed that Donald J. Adams, libelant and appellee herein, appears as a member of either Line 7 or 24.

New Orleans, January 16th, 1926.

(Signed) Denegre, Leovy & Chaffe, Proctors for United States Steel Products Company and Globe Indemnity Company, Appellants. Eugene S. Hayford, Proctor for Donald J. Adams, Appellee.

In United States District Court

Opinion—Dated December 4/25; Filed December 5/25

Libelant shipped as oiler on the American Steamship "Steel Trader," having signed articles November 29th, 1921, though employed on November 27th, 1921, at the rate of $80.00 per month for a round trip from New Orleans, via. Port Arthur, Texas, to Piraeus, Greece, and East Indian ports, and return to an Atlantic or Gulf port, sailing December 8, 1921, arriving at Port Arthur, the first call port, December 12, 1921, where he was discharged and paid off up to and including that date.

[fol. 29] He alleges he refused to sign the customary mutual release because he was discharged without just cause and in violation of the shipping articles; that he is due wages up to May 19, 1922, the arrival date of the vessel's return to New Orleans, amounting to $414.50 and subsistence at $2.50 per day for the same period, according to contract.

Claimant's answer is in effect a general denial, with special allegations that on December 5, 1921, there was inserted in a certain wage provision as one of the voyage clauses in the shipping articles, drafted and inserted as a rider thereon with the consent of the Shipping Commissioner; that when it was read to the crew by the Shipping Commissioner, libelant Adams refused to consent thereto, and a note to that effect was made upon the voyage clause rider; that as libelant continued to refuse consent when the vessel arrived at Port Arthur, he was discharged and paid off by the master according to R. S. 4527 Vol. 7 U. S. Comp. Stat. 8813. Barnes Fed. Code 11807.

"Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the Court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned."

that he was paid an extra month's wages of $80.00 in addition to the earned wages, making a total of $120.87, for [fol. 30] which he gave a receipt before the United States Shipping Commissioner.

The wage provision inserted as a voyage clause, in the articles, after he was signed, to which libelant refused to consent, reads:

"Should any changes in the scale of wages of the crew employed on vessel whose owners are members of the American Steamship Owners Association, be made after the departure of this vessel, such scale of wages shall pre-

vail on this vessel from date new scale is put into effect by the American Steamship Owners Association."

Considering that libelant had signed the articles on November 29, 1921, and expressly refused to consent to the voyage clause, which was inserted on December 5, while the vessel was still in port, and before the voyage was commenced on December 8, 1921, he should have been then discharged and not thereafter, when he was discharged for the sole reason that he persisted in refusing to consent while at sea between New Orleans and Port Arthur, Texas, where the ship arrived December 12, 1925.

Unquestionably the seaman had a right to stand upon the terms of his contract as originally signed, and that he was within his right in refusing to consent to the objectionable clause.

Libelant contends that the action of the master in commencing the voyage and awaiting arrival at a port of call, there to discharge him, was a breach of his contract for which damages will lie, which should be measured by the wages he would have earned at the completion of the voyage, up to and including May 22, 1922, and subsistence; that the decision in the "Howick Hall" case, No. 16989 of the docket, [fol. 31] is decisive of this controversy; that seamen are the wards of the Court, whose wage contracts will be jealously protected, in keeping with the general policy of Maritime Law; that the penalty of one month's wages prescribed by R. S. 4527 is not the sole remedy afforded him, as the claimant insists; that R. S. 4529 more properly applies; that the cases cited by claimant in support of its contention that the penalty of one month's wages discharges the vessel and owner of further liability are not in point; that the decisions in the "Inland," 271 Fed. 1008; Brown v. U. S. 283 Fed. 425; the "Menton," 287 Fed. 583; the "George B. Ferguson," 140 Fed. 955; the "Staghound" and the "Gamecock," 97 Fed. 973; do not support claimant's contention.

Clearly the libelant was entitled to the protection of his rights of contract in the shipping articles as he signed them, by which his employment was assured him for a period of some four months at a fixed wage and subsistence.

The cases cited on both sides, including the Wilson case, 210 Fed. 898, in which there was no discharge of the seamen, are not sufficiently in point to sustain the application of the penalties of either R. S. 4527 or 4529 to the circumstances here presented, whether the penalties prescribed may be intended in the nature of statutory damages for breach of contract or not.

Congress could not have intended to deny seamen equal protection of the law as applied to contracts generally, by the enactment of these statutes intended to aid and give special protection to seamen.

The decision of late Circuit Judge Pardee, in the "City of New Orleans," (33 Fed. 683), is more nearly applicable to the situation here presented. In that case where some roustabouts shipped on a river packet from Cairo, Illinois, to New Orleans, and return to Cairo, were discharged on [fol. 32] arrival at New Orleans, and paid their wages up to time of arrival by direction of the owner, because the voyage was broken up on account of ice in the river at Cairo, held that they were entitled to wages for the round trip. Although section 4527 had then been subsisting law, since 1877, the case was decided in 1888 without any reference to it whatever.

Likewise in the T. P. Leathers case (C. C. A. 5th Circuit), 74 Fed. 845, where a roustabout shipped for a voyage from New Orleans to Waterloo and return, was discharged because incapacitated by a freezing of his hands by ice on the return trip to Vicksburg, the wages and damages allowed him by the District Court were denied on appeal only because on his own testimony the libelant had volutarily left the boat and was not discharged against his consent.

Likewise in the "White Seal" (C. C. A. 9th C.) 194 Fed. 402, where the evidence was held to sustain a finding of the District Court that libelant was discharged without cause from his position as Chief Engineer of a steamer before the end of his contract term and entitled him to recover wages to the end of the term.

Considering that it does not appear in the evidence of record that libelant was a party constructively, as a member of a union or otherwise, to any general seamen's strike, or in any wise bound by any wage agreement that might have been reached between a union and the ship owners, or by

any arbitrary decision of the steamship owners, so that his status was measurable only by his individual contract, appearing on the face of shipping articles at the time of signing; that on his direct examination the master testified that Adams was paid off at Port Arthur, Texas, on December 12, 1921, simply because: "he would not agree to the wage scale," which means nothing except that he stood upon his [fol. 33] contract as he made it, it is concluded that the libelant is entitled to the relief prayed for up to the amount of his wages from December 13, 1921, to May 19, 1922, inclusive. The amount claimed for subsistence is not sustained by evidence.

Accordingly there will be a decree for libelant in the sum of $414.50, less a credit of the $80.00 already paid him as a penalty, with 6% interest from May 19, 1922. Costs to follow decree.

(Signed) Louis H. Burns, Judge.

New Orleans, Louisiana, December 4, 1925.

In United States District Court

Order to Show Cause.—Filed December 7, 1925

On motion of the United States Steel Products Company, Claimant and Respondent, through its proctors, Denegre, Leovy & Chaffe, and on showing to the Court that mover is aggrieved by the judgment and opinion rendered herein in favor of libelant on December 5th, 1925, that the said judgment is contrary to the law and the evidence and mover desires a rehearing herein;

It is ordered that Donald J. Adams, Libelant herein be and he is hereby notified to show cause on Saturday, December 12th, why a rehearing should not be granted to the United States Steel Products Company, Claimant and Respondent herein.

[fol. 34] December 7th, 1925.

(Signed) Louis H. Burns, Judge.

Service accepted.

(Sgd.) Eugene D. Hayford, Atty. for Libelant, Donald J. Adams.

Minute entry of agreement and submission of motion for rehearing December 12, 1925, omitted in printing.

[fol. 35] IN UNITED STATES DISTRICT COURT

OPINION ON MOTION FOR REHEARING—Dated December 31, 1925; Filed December 31, 1925

This cause was heard upon a motion for rehearing filed by claimant, in support of which its proctor contends that since the seamen was admittedly one who had signed an agreement and was afterwards discharged before one month's wages were earned, without fault on his part justifying such discharge, and paid all the wages he had earned, together with a sum in addition equal to one month's wages as compensation, the case falls within the very words of R. S. 4527. He insists that the statute must be applied in this case as providing the sole remedy available to the libelant; or it must be read out of existence or declared unconstitutional. In his view the very words of the statute might be used to describe Adams, as follows: "A seaman who has signed an agreement and is afterward discharged * * * before one month's wages are earned, without fault on his part justifying such discharge, and without his consent." He thus seeks to ignore or read out of existence the first of the two specific conditions upon which the application of the statute depends.

In my view the first condition contemplates a voyage before the commencement of which the seaman is wrongfully discharged. The second does not contemplate an immediate voyage, as where the vessel is in dock or otherwise delayed, and the seaman is wrongfully discharged before the month's wages are earned.

If Congress had intended the application of the statute after as well as before a voyage is commenced" it would, [fol. 36] no doubt, have either omitted the first condition, thus merely prescribing that the extra compensation should be paid as damages for the breach upon a wrongful discharge "before one month's wages are earned"; or, in the alternative, have qualified the second condition by specifically prescribing for the extra compensation upon a wrong-

ful discharge "before one month's wages are earned" after a voyage has commenced.

As the statute stands I am persuaded that the second condition is controlled or at least qualified by the first. Certainly the Courts have no authority either to read a specific condition out of a statute, or a supposedly implied one into it, and therefore when a case such as this is presented where the wrongful discharge occurred after the commencement of the voyage contemplated by the contract the statute can not be applied.

I find support in this view in the fact that Section 21 of the original statute (Act of June 7, 1872, 17 Stat. 266) was designed to clear up confusion in the law regulating the discharge of seamen before a voyage is commenced, as it subsisted prior to 1872 as one of a series in that comprehensive act containing sixty-eight sections, variously regulating the method of employment, discipline and discharge of seamen. The Supreme Court in the Inter-Island Steam Navigation Company vs. Byrne, 239 U. S. 459, referred to its purpose as being fundamentally to afford protection to seamen in respect to their treament and wages.

That the purpose of Congress, with respect to the wrongful discharge of seamen before the voyage commenced, was to make a definite rule of compensation for breach of contract, seems manifest from the pre-existing confusion upon this point reflected in the jurisprudence and text books of that time. Whereas there was no doubt [fol. 37] with respect to a discharge after the commencement of a voyage that damages would be recoverable in an action either at common law *of* by a libel in admiralty for a breach of contract to be regulated by the circumstances of the case. This seems certain from the significant omission by Congress of any statutory provision with respect to wrongful discharges occurring after the commencement of voyages or after one month's pay has been earned.

Claimant's proctor gives a fair summary of this pre-existing condition of the law in his brief to show that this law is not peculiar to the United States, but is based upon similar European maritime laws and rules which were the forerunners of the Act of Congress and from these it ap-

pears that all doubt, uncertainty and indefiniteness was in respect to the measure of damages for a wrongful discharge before the voyage commenced, and not thereafter. These show that a clear distinction was always recognized. I quote from his brief the following excerpts:

"In the Marine Ordinances of France, Book III, Tit. IV, Article X, p. XXXII, Vol. 2 of Peter's Admiralty Decisions, it was provided:

"If a Master dismiss a mariner without a sufficient cause before the voyage is begun, he must pay him one third of his wages; and if after the voyage is begun, he shall pay his whole wages, together with his charges for returning to the place of his departure."

Article III of the same Book and Title the Ordinances provided:

"If by the fault of the owners, masters or merchants, a voyage be broke before departure of the ship, the seamen [fol. 38] hired for the voyage shall be paid for the time taken up in rigging and equipping the ship, and have one-fourth of their wages."

Article XLI of the Laws of the Hanse Towns, Vol. I, Peter's Admiralty Decisions, p. CV, provided:

"If a mariner behaves ill the master may turn him off; but if he discharges him for no reason before the voyage begins, he shall pay him a third part of his wages, but shall not charge it to the ship's account."

In the "Rights and Duties of Merchant Seamen" by Curtis, Boston 1841, that then leading authority at p. 299 said:

"In regard to the measure of damages, when a seaman is wrongfully discharged, the maritime law of continental Europe makes a distinction between such discharge abroad, and when made before the vessel sails. If discharged in a foreign country, the entire wages, with the expenses of return are given if discharged before the vessel sails, only a third of the wages that might have been earned are awarded,

for the reason that the mariner can readily find other employment."

At page- 299-301 he says in part:

"It does not appear that this proportion of one-third has been adopted in our law in cases of wrongful discharge before the vessel sails. Damages would undoubtedly be recoverable, in an action on the case at common law, or by a libel in the Admiralty, for the breach of the contract, to be regulated by the circumstances of the case."

[fol. 39] Parsons in 1869 in Vol. II, p. 50 of his Law of Shipping stated the rule:

"For the settled rule appears to be, that if the voyage is broken up, or the seamen are dismissed without cause before the voyage begins, they have their wages for the time they serve, and a reasonable compensation for special damages."

A reading of the Laws of Shipping of the time before 1872, Parsons, Flanders, Dixon, Abbott, will show into what confusion this question had come. It is safe to say, therefore, that Congress enacted R. S. 4527 to clear up that confusion and to provide an exact measure of damages for such cases."

The briefs filed here purport to exhaust our Federal jurisprudence since 1872, and yet in no case cited does the precise question as to whether or not R. S. 4527 provides the exclusive and sole remedy afforded seamen wrongfully discharged, and particularly those discharged after the voyage is commenced. In some cases the parties so assumed and apparently confined their claims to an extra month's compensation, and the Courts made awards accordingly. In others it appeared that the seamen had not been discharged at all and therefore the statute did not apply. In others the compensation was assessed by analogy to the statute, though it did not directly apply. See The "Donna Lane," 299 F. 977; The "Great Canton," 299 F. 953; The "Quaker City," 290 F. 409; The "Men-

ton," 287 F. 531; Brown vs. United States, 283 F. 425; Hughes vs. Southern Pacific Co., 274 F. 876; The "Inland," 271 F. 1008, affirmed without opinion, 279 F. 1018; Manhattan Canning Co. v. Wilson, 205 F. 996; 210 F. 898, affirmed 217 F. 41; The "August Belmont," 153 F. 639; [fol. 40] Caffyn v. Peabody, 149 F. 294; The "George B. Ferguson," 140 F. 955; The "Joseph B. Thomas," 136 F. 693; The "John R. Bergen," 122 F. 98; The "Charles D. Lane," 106 F. 746; The "Villa v. Herman," 101 F. 132; The "Staghound" and the "Gamecock," 97 F. 973; The "Glenesslin," 96 F. 768; The "Alice Blanchard," 92 F. 519; The "St. Paul," 77 F. 998; The "Caroline Miller," 36 F. 507; The Schooner "Jefferson Borden," 6 F. 301.

This list includes all cases shown in the digest and in Shepard's Citations, where Section R. S. 4527 has been cited, mentioned or construed, and in none of them has the precise question been squarely presented and considered by the Courts.

Claimant also cites as decisive of this case a decision in Calvin vs. Huntley, 178 Mass. 29, 59, N. E. 435, where the State Court considered R. S. 4527 in determining its jurisdiction of seamen's claims for wages. What that Court actually decided was that the statute did not contemplate imposing a penalty or forfeiture, but was designed to protect the seamen, and furnish a clear, well-defined rule of damages for a breach of contract as between him and the Master or owner, by having a general law with reference to which the parties may be conclusively presumed to have contracted. This much is undoubtedly true, but it does not necessarily follow that the rule so adopted is to be stretched beyond its manifest purpose.

The necessary conclusion is that Section 4527 does not apply to claims of seamen for compensation for damages for breach of their contracts by wrongful discharge without fault on their part justifying such discharge, and without their consent, after the commencement of the voyage.

Accordingly the motion for rehearing will be denied and a decree entered.

[fol. 41] The inadvertent use of the words "as a penalty" in the concluding paragraph of the original memorandum

opinion filed December 4th, 1925, is to be taken as amended so as to read "erroneously paid as extra compensation."

(Signed) Louis H. Burns, Judge.

New Orleans, Louisiana, December 31, 1925.

IN UNITED STATES DISTRICT COURT

DECREE—December 31, 1925

This cause came on at a former day to be heard upon the pleadings and proofs as specified in the notes of evidence offered on behalf of the respective parties, and was argued by the proctors for the parties in interest and submitted when the Court took time to consider;

Whereupon, and on due consideration thereof and for the written reasons of the Court on file herein;

It is ordered, adjudged and decreed by the Court that the libelant herein, Donald J. Adams, do have and recover of and from the respondent, Steamship "Steel Trader," the full sum of Three Hundred and thirty-four and 50/100 [fol. 42] ($334.50) Dollars, with 6% interest from May 19, 1922, until paid, and all costs of Court, and

Whereas, the said Steamship "Steel Trader" has been released from seizure herein upon a bond conditioned as required by law, with the United States Steel Products Company as claimant and owner of said Steamship "Steel Trader," as principal, and Globe Indemnity Company, as surety;

It is further ordered, adjudged and decreed that the said principal and said surety on the said release bond be condemned in solido, to pay this decree and all costs.

Decree rendered December 31st, 1925.

Decree signed, January 31st, 1926.

(Signed) Louis H. Burns, Judge.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed January 18, 1926

To the Honorable Louis H. Burns, Judge of the United States District Court for the Eastern District of Louisiana, New Orleans Division:

The petition of the United States Steel Products Company, Claimant and Owner of the Steamship "Steel Trader," and respondent herein, and of the Globe Indemnity Company, surety on the release bond given and filed herein, with respect represents.

[fol. 43]

I

That there are errors in the final decree rendered herein in favor of libelant on the 31st day of December, 1925, and signed on the 13th day of January, 1926, said errors being to the manifest prejudice and injury of petitioners and from which they desire to appeal for the purpose of having such errors corrected as hereinafter set forth in the enclosed assignment of errors hereto attached and hereby made a part hereof as fully to all intents and purposes as if at large written herein.

II

That the above named petitioners desire that an appeal of the cause and from the whole of said decree be granted to them to the United States Circuit Court of Appeals for the 5th Circuit, returnable according to law, and that the same operate as a supersedeas on said petitioners giving bond as security according to the law, and on said appeal petitioners intend to seek a new decision on the law and on the facts upon the pleadings and proofs introduced in the District Court and to be introduced in the Appellate Court with the object of obtaining a reversal of the same and a final decree in their favor.

Wherefore petitioners pray that an appeal be granted to them in the above numbered and entitled cause from the whole of said decree to the United States Circuit Court of

Appeals for the 5th Circuit, returnable according to law upon filing a bond as security according to law, the same to operate as a supersedeas, and that libelant, Donald J. Adams, appellee herein, may be duly cited to answer this [fol. 44] appeal, and petitioners further pray for all general and equitable relief.

(Signed) Denegre, Leovy & Chaffe, Proctors for Petitioners and Appellants.

January 16, 1926.

Order

Let an appeal be granted to the above named petitioners, the United States Steel Products Company and the Globe Indemnity Company, as prayed for, upon their giving bond in the sum of Two hundred and fifty dollars ($250.00), with good and solvent surety, conditioned as the law provides, the same to operate as a supersedeas, and let libelant, Donald J. Adams, appellee herein, be duly cited to answer this appeal, the said appeal to be returnable to the United States Circuit Court of Appeals for the 5th Circuit within thirty days of the date of this order.

(Signed) Louis H. Burns, Judge.

New Orleans, Louisiana, January 18th, 1926.

Service accepted.

(Signed) Eugene S. Hayford.

[fol. 45] In United States District Court

Assignments of Error—Filed January 18, 1926

Now comes the United States Steel Products Company, Claimant and Owner of the Steamship "Steel Trader," respondent herein, and the Globe Indemnity Company, surety on the release bond given and filed herein, praying an appeal of this cause and assigning the following errors in the final decree rendered herein:

I

That the judgment is contrary to the law and the evidence.

II

That the Court erred in finding and holding that United States Revised Statute 4527 was not applicable to this case and the amount of compensation provided for therein did not constitute the sole remedy to which libelant, appellee herein, was entitled.

III

That the Court erred in finding and holding that libelant, appellee herein, was entitled to a decree for $414.50, less a credit of $80.00 already erroneously paid as extra compensation, with 6% interest from May 19th, 1922, and costs, or for any other sum whatever.

IV

That the Court erred in not finding and holding that the United States Revised Statute 4527 was applicable and [fols. 46 & 47] specially made and provided to cover the class of cases and circumstances involved in this suit and the claims herein presented and that the one month's extra wages made and provided in said Act as compensation constituted the sole remedy of libelant, appellee herein, and as the claimant and respondent, appellant herein, had paid said libelant said amount and all amounts due under said United States Revised Statutes 4527, and had complied in every respect with the said statute, no further or other amounts were due libelant and his suit and libel should have been dismissed and a final decree rendered in favor of claimant and respondent, appellant herein. And for these reasons and other errors, appearing on the face of the record, appellants pray that the decree appealed from be reversed and that said appellants being respondents herein, and claimant and owner of the Steamship "Steel Trader" and principal and surety on the release bond, may have a decree against the libelant, appellee herein, dismissing his libel with costs.

New Orleans, Louisiana, January 16, 1926.

(Signed) Denegre, Leovy & Chaffe, Proctors for United States Steel Products Company and Globe Indemnity Company, said Appellants.

Bond on appeal for $250.00, filed January 18th, 1926, omitted in printing.

[fol. 48] In United States District Court

Praecipe for Transcript of Record—Filed January 18 26

Mr. Henry J. Carter, Clerk United States District Court, Eastern District of Louisiana, New Orleans Division:

In making up the transcript of record for appeal in the above numbered and entitled cause, please include therein [fol. 49] only the following documents, exhibits, pleadings, evidence and minutes, to wit:

1. Libel.
2. Admiralty Warranty and Marshal's return thereon.
3. Claim.
4. Release bond.
5. Exceptions filed by claimant and respondent.
6. Answer.
7. Hearing and submission of cause.
8. Note of evidence for claimant & respondent.
9. Deposition for claimant & respondent.
10. Exhibit "Steel Trader 1" discharge certificate before United States shipping commissioner, Port Arthur, Texas, December 12th, 1921.
11. Written stipulation of proctors of this date annexed hereto as part hereof agreeing to omission of certain exhibits and containing agreement of essential facts therein contained to be filed and certified up with this record.
12. Opinion of the Court dated December 4th, 1925.
13. Application for rehearing and order thereon.

[fol. 50] 14. Hearing and submission of cause upon application for rehearing.

15. Opinion of Court upon application for rehearing, dated December 31st, 1925.
16. Final decree signed January 13th, 1926.
17. Petition for an appeal and order allowing same.
18. Assignment of errors.

19. Bond of appeal.
20. This praecipe.

New Orleans, January 18th, 1926.

Respectfully, (Signed) Denegre, Leovy & Chaffe, Proctors for United States Steel Products Company and Globe Indemnity Company, Appellants Herein.

Praecipe approved.

(Signed) Eugene S. Hayford, Proctor for Donald J. Adams, Appellee.

[fol. 51] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 52] Minute entry of argument and submission April 7, 1926, omitted in printing.

[fol. 53] In United States Circuit Court of Appeals,
Fifth Circuit

No. 4759

United States Steel Products Company, Claimant and Owner of S. S. "Steel Trader," et al., Appellants,

versus

Donald J. Adams, Appellee

Appeal from the District Court of the United States for the Eastern District of Louisiana

Jas. Hy. Bruns (Geo. Denegre, Victor Leovy, Henry H. Chaffe, Harry McCall, and Jas. Hy. Bruns on the brief) for Appellants.

Eugene S. Hayford for appellee.

Before Walker, Bryan, and Foster, Circuit Judges

Opinion—Filed May 13th, 1926

Walker, Circuit Judge:

By duly signed shipping articles, dated New Orleans, La., November 29, 1921, the appellee was employed as an oiler on board the steamship Steel Trader "from the Port of New Orleans to Pireaus, Greece, and East Indian Ports, and such other ports and places in any part of the world as the Master may direct and back to a final port of discharge and or loading ports on the Atlantic or Gulf Coast in the United States, for a term not exceeding twelve calendar months;"—his wages being at the rate of $80.00 [fol. 54] per month. After the articles were signed the following provision, typewritten on a sheet of paper, was pasted on the foot of page 1 of the articles, a notation written in ink on that slip showing that appellee did not consent to that provision:

"Should any changes in the scale of wages of crews employed on vessels whose owners are members of the American Steamship Owners Association, be made after the departure of this vessel, such scale of wages shall prevail on this vessel from date new scale is put into effect by the American Steamship Owners Association."

On December 12, 1921, at Port Arthur, Texas, to which place the vessel went on leaving New Orleans, the appellee was discharged without his consent because he would not agree to the last above quoted provision. He was then paid wages at the contract rate for the time he had served and an extra month's wages of $80.00, and for the amount so paid he gave a receipt before a United States Shipping Commissioner, but did not sign any release of demands for wages. After the return of the vessel to the port of New Orleans on May 19, 1922, the appellee filed his libel alleging that he was discharged in violation of said articles, against his will and without just cause, and claiming that he was entitled to his wages up to and including the day of signing off after the vessel's return to New Orleans. The claim asserted was resisted on the ground that the appellee was discharged and paid off in accordance with

the provision of Section 4527 of United States Revised Statutes, which reads as follows:

"Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the Master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the Court hearing the case, of having been improperly discharged, re- [fol. 55] cover such compensation as if it were wages duly earned."

By the decree appealed from the appellee was awarded the amount of his wages for the voyage, less a credit of $80.00 paid as above stated, with 6% interest from May 19, 1922.

The only ground on which the decree is complained of is that under 4527 R. S. the payment made satisfied all liability incurred by the wrongful discharge of the appellee. The appellee's rights under the contract evidenced by the shipping articles are governed by ordinary rules of contract except as modified by statute. Unless a statute otherwise provides, on the wrongful discharge of an employee before the expiration of the time for which he was employed he is entitled to compensation for the services already rendered and also to such damages as he may sustain as a result of the wrongful discharge or breach of the contract. To say the least, the language of the provision in question does not clearly manifest a purpose to give to the payment to a seaman wrongfully discharged within the time mentioned of the amount of any wages he may have earned and in addition a sum equal to one month's wages the effect of satisfying all liability incurred by wrongfully discharging him. That provision was originally enacted as section 4 of the Seaman's Act of June 7, 1872, the fundamental purpose of which was to afford protection to seamen in respect to their treatment and wages. Inter-Island Steam Navigation Co. v. Byrne, 239 U. S. 459. The immediately preceding section of that act, before it was amended by the Act of December 21, 1898, (U. S. Comp. Stat. 8317), read as follows: "In cases where the service of any seaman

terminates before the period contemplated in the agreement, by reason of the loss or wreck of the vessel, such seaman shall be entitled to wages for the time of service prior to such termination, but not for any further period." This [fol. 56] provision is explicit in limiting the time for which the seaman shall be entitled to wages, while R. S. 4527 makes the amount therein prescribed payable to a seaman, on his discharge under the circumstances therein dealt with, "as if it were wages duly earned," without indicating that such payment has the effect of satisfying all liability to the seaman resulting from his wrongful discharge. The last mentioned provision determines the amount to be paid, "as if it were wages duly earned," to the wrongfully discharged seaman in the presence of a duly authorized shipping commissioner. R. S. 4549. R. S. 4552 determines the legal effects of a discharge before a shipping commissioner. The second paragraph of that section declares that it "shall operate as a mutual discharge and settlement of the demands for wages between the parties thereto, on account of wages in respect of the part voyage or engagement." That language does not disclose a purpose to give to the payment of the prescribed amount in the presence of a shipping commissioner the effect of satisfying or extinguishing whatever right of action the seaman then may have against the ship or its owner. The case of the W. L. White, 25 Fed. 503, involved the question of the effect, on the right of a seaman hurt in the service of the ship to recover from the ship the expenses of his cure, of his discharge pursuant to the provision of the Dingley Act of June 26, 1884, that "whenever a seaman is discharged by a consular officer in consequence of any injury received in the service of the vessel, such consular officer shall require the payment by the master of one month's extra wages over and above the wages due at the time of the discharge." It was held that such discharge did not absolve the vessel from liability for the expenses of the seaman's medical treatment and cure for a hurt received prior to the dis- [fol. 57] charge. The following was included in the opinion of Judge Addison Brown in that case:

"If a cause of action in favor of the seaman had already accrued for injuries received by violence, or cruel usage, or insufficient food, a discharge at the end of the voyage, or

by a consul in a foreign port, would not affect his right of action. Several of the cases above cited are of that kind. It is the same with his claim for the payment of the expenses of care for a hurt received in the service of the ship prior to his discharge. The inchoate right of action has already accrued to the seaman, which is not affected by a discharge from further claim to wages. * * * There is nothing in the act of June 26, 1884, intimating any intent to absolve the ship from her legal obligations to an injured or sick seaman, beyond, possibly, the wages to the end of the voyage that might otherwise have been recovered, instead of one month's extra pay after discharge. Section 4600, as amended by the same act, provides that the consular officer, in case of apprehension of a seaman deserting on account of 'unusual or cruel treatment, shall discharge him,' requiring payment of one month's extra wages. It is impossible to suppose that congress intended that one month's wages should be taken as satisfaction of whatever claim to damages might exist for any actual injuries inflicted by such cruelty, or as a bar to such a claim. The 'discharge' must be deemed to leave such claims unaffected. * * * If vessels could in this way relieve themselves from all charges for treatment of sick or wounded seaman, it would be an extreme hardship upon seaman, and would be liable to lead to abuses. The effect in this instance has been to deprive the seaman of the entire fruits of the voyage. An act like that of June 26, 1884, amending the prior law, and designed in part for the benefit of seamen, ought not to be construed to their prejudice any further than its language requires. As it does not expressly absolve the vessel from her liability previously incurred for the medical treatment and cure of the discharged seaman, it should not be construed as doing so any more than an ordinary discharge at the close of the voyage would do so, nor any more than it would bar a vested right of action for a tort."

The language of R. S. §4527 is consistent with an intention to treat the amount required to be paid to the wrongfully discharged seaman as compensation for the service already rendered by him. Certainly that language falls far short of expressly absolving the vessel, on the payment of such amount, from her liability for damages for [fol. 58] breaching the contract evidenced by the shipping

articles. That provision determines what is payable to the wrongfully discharged seaman at the time of his discharge. Other provisions determine what is payable at the time of the discharge of a seaman on account of the unseaworthiness of the vessel, or when the vessel is sold in a foreign country, or on the complaint of a seaman in a foreign country based on alleged violations of his rights. U. S. Comp. Stat. §§8350, 8373, 8374. Shipping commissioners and consular officers are vested with authority to exact compliance with those provisions. U. S. Comp. Stat. §§8297, 8338, et seq. In the absence of a seaman's consent, those officials are not vested with authority or jurisdiction to determine what is recoverable on accrued or inchoate causes of action in favor of the seaman against the ship or its owner, based on alleged torts or breaches of contract obligations. In the absence of a statute requiring a different result, after the entering upon the voyage provided for in the shipping articles the ship is pledged to the complete execution of the contract, and may be proceeded against for non-performance, and if a seaman is discharged without justifiable cause before the termination of the voyage he is entitled to full indemnity, which may be measured by the stipulated wages for the entire voyage and the amount of expenses in returning to the port of discharge, deducting what he earned, or reasonably could have earned, in other employment during the period of his engagement. The Topgallant, 84 Fed. 356; Waitshoair v. The Grargend, 42 Fed. 175; The City of New Orleans, 33 Fed. 683; The White Seal, 194 Fed. 402. While in the [fol. 59] cases of many discharges covered by R. S. §4527 the amount thereby required to be paid to the seaman on his discharge would be sufficient to afford him full indemnity, it is apparent that in many other cases covered by that provision that amount would be greatly less than enough to indemnify the seaman for the loss resulting from the violation of his contract rights. The discharge which was in question in the last above cited case was not covered by R. S. §4527, and no question as to the meaning or effect of that statute was considered in that case. The facts of that case, as disclosed by the report of it, show that if that statute had been applicable and the libellant therein

had been an oiler engaged at wages of $80.00 a month for a voyage from Seattle to Fairbanks, Alaska, and return, and had been wrongfully discharged at Fairbanks thirteen days after the date of the shipping articles, (as happened to the appellee in the instant case), the wages then accrued and $80.00 in addition would have been substantially less than enough to cover the cost of the seaman's transportation from Fairbanks to Seattle. If the statutes in question has the meaning attributed to it by counsel for the appellant it has the effect of making it possible to discharge a seaman engaged for a long voyage, without his consent and without fault on his part, at whatever place, other than a foreign port, where the ship may be before one month's wages are earned, without incurring any liability except to pay any wages he may have earned and in addition a sum equal in amount to one month's wages, though what is so paid is greatly less than enough to indemnify the seaman for the loss resulting from the violation of his contract rights. During the early part of a long [fol. 60] voyage a new crew might be obtained at such wages as to make it profitable, by paying one month's extra wages, to get rid of the entire crew previously engaged for the voyage. Plain language would be required to justify the imputation to Congress of an intention to permit seamen to be subjected to such treatment and to be deprived of adequate redress therefor. Frequently it is impossible at or about the time of the wrongful discharge of a seaman to ascertain what financial loss will result to him therefrom. In great measure the result depends on what, if any, opportunities he has of getting other employment. It is reasonably to be expected that the seaman will suffer loss in consequence of such a discharge. The language of the provision in question, considered with reference to the situation dealt with, shows that the lawmakers intended thereby to require the payment, when the described wrongful discharge of a seaman is effected in the circumstances stated, of an amount ordinarily sufficient for his immediate needs; but an inference that such payment was intended to have the effect of satisfying all claims, accrued or inchoate, of the seaman against the ship or its owner is one not required by that language and is not in harmony with the funda-

mental purpose of the Act of which that provision was a part to protect seamen and to safeguard rights they had prior to the enactment of that statute.

We conclude that the provision in question did not give to the payment made to the appellee the effect of destroying his right to full redress for the alleged wrong to him, and that the only ground on which the decree was complained of is not a tenable one.

That decree is affirmed.

[fol. 61] In United States Circuit Court of Appeals

[Title omitted]

Judgment—May 13, 1926

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel:

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the plaintiffs in error, United States Steel Products Company, Claimant and Owner of the S. S. "Steel Trader," and another, and the surety on the appeal bond herein, United States Fidelity & Guaranty Co., be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

[fol. 62] In United States Circuit Court of Appeals, Fifth Circuit

[Title omitted]

Motion for Stay of Mandate and Order Allowing Same—Filed May 28, 1926

Comes now the appellants in the above styled cause, and moves the Court for a stay of the mandate of this Court for a time sufficient to enable the appellants to present to the

Supreme Court of the United States an application for a writ of certiorari.

(Signed) Jas. Hy. Bruns, Attorney for Appellants.

May 28, 1926.

Upon presentation of the foregoing motion, it is ordered that the mandate in said cause be stayed until the first Monday in October, 1926; and if by that time appellants [fol. 63] have submitted to the Supreme Court of the United States an application for certiorari, issuance of said mandate be stayed pending the disposition of said application for certiorari.

Done and Ordered at New Orleans, Louisiana, this 28th day of May, A. D. 1926.

(Signed) Rufus E. Foster, U. S. Circuit Judge.

[fol. 64] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 65] In Supreme Court of the United States

Order Allowing Certiorari—Filed November 1, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(15)

Office Supreme Court, U. S.
FILED
AUG 12 1926
WM. R. STANSBURY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No. [redacted] 106

UNITED STATES STEEL PRODUCTS COMPANY, CLAIMANT AND OWNER OF S. S. "STEEL TRADER," ET AL., PETITIONERS,

vs.

DONALD J. ADAMS,

PETITION FOR WRIT OF CERTIORARI.

GEO. DENEGRE,
VICTOR LEOVY,
HENRY H. CHAFFE,
HARRY McCALL,
JAS. HY. BRUNS,
JOHN M. WOOLSEY,
Counsel for Petitioners.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No.

UNITED STATES STEEL PRODUCTS COMPANY, CLAIMANT AND OWNER OF S. S. "STEEL TRADER," ET AL., PETITIONERS,

vs.

DONALD J. ADAMS, RESPONDENT.

IN RE UNITED STATES STEEL PRODUCTS COMPANY AND GLOBE INDEMNITY COMPANY APPLYING FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of the United States Steel Products Company and the Globe Indemnity Company respectfully shows to this Honorable Court:

A.

Summary and Statement of the Matter Involved.

1. That your petitioners are aggrieved by the final judgment and decision of the United States Circuit Court of Appeals for the Fifth Circuit, entered in that court on the 13th day of May, 1926, in the case numbered and entitled on the docket of the said court No. 4759, *United States Steel Products Company, claimant and owner of S. S.* "STEEL TRADER," *et al., appellants, vs. Donald J. Adams, appellee* (R., 53 et seq.).

It was held by the said court that Section 4527 of the United States Revised Statutes (Sect. 21 of the Act of June 7, 1872, 17 Stat., c. 322, U. S. Comp. Stats. 1916, Sec. 8318) reading as follows:

> "Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned."

does not mean what it says.

The Circuit Court of Appeals held that the section just quoted did not provide the sole and only remedy

and the total compensation to which a seaman on articles is entitled provided he is wrongfully discharged before one month's wages are earned, without his consent.

The Circuit Court of Appeals held that the statute was not exclusive in describing a remedy or the amount of compensation, and that a seaman discharged under such circumstances could recover, in addition to the amount of the wages earned to the date of his discharge and the extra month's wages provided in the statute, additional sums as compensation for damages for his wrongful discharge.

2. The opinion herein of the Court of Appeals hinges upon two propositions, which it is urged and believed are erroneous:

Put in the court's own language these are:

> First. "To say the least, the language of the provision in question does not clearly manifest a purpose to give to the payment to a seaman wrongfully discharged within the time mentioned of the amount of any wages he may have earned and in addition a sum equal to one month's wages the effect of satisfying all liability incurred by wrongfully discharging him" (R., 54).
>
> Second. "The language of R. S. § 4527 is consistent with an intention to treat the amount required to be paid to the wrongfully discharged seaman as compensation for the service already rendered by him. Certainly that language falls far short of expressely absolving the vessel, on

> the payment of such amount, from her liability for damages for breaching the contract evidenced by the shipping articles. That provision determines what is payable to the wrongfully discharged seaman at the time of his discharge" (R., 56, 57).

The decision of the Circuit Court of Appeals is wrong, according to petitioners' contention, because:

1. It interprets the statute contrary to the will and intention of Congress, as expressed in clear words;

2. It places an interpretation and construction upon R. S. 4527 in conflict with reported decisions, and

3. It disregards the purpose for which the statute was enacted, as reflected by its historical background.

There is therefore involved here purely a question of law, involving the construction of a Federal statute.

3. By this decision and decree the Circuit Court of Appeals for the Fifth Circuit affirmed a decree in admiralty of the District Court of the United States for the Eastern District of Louisiana in favor of the libellant seaman, for damages for wrongful discharge in the sum of three hundred and thirty-four and 50/100 dollars ($334.50), with 6 per cent (6%) interest from May 19, 1922, until paid, and all costs of court (R., 41, 42).

4. This is a petition by the said United States Steel Products Company and the Globe Indemnity Company, respectively claimant and surety in the District Court

and appellants in the Circuit Court of Appeals, for a writ of certiorari to review the said decision and decree of the Circuit Court of Appeals for the Fifth Circuit.

5. The libel was brought originally *in rem* in the District Court against the steamship "STEEL TRADER" for damages alleged to have arisen from the wrongful discharge of libellant, in violation of the shipping articles, from the said vessel without his consent before the term of his engagement had been completed (R., 2). Libellant had shipped at New Orleans on or about November 29, 1921, for a voyage to Greece and the far east and return and was wrongfully discharged on the voyage out at Port Arthur, Texas, on December 12, 1921, 13 days after the commencement of the voyage (R., 2, 22 & 27).

The sole defense to the suit is based on the fact that the libellant was discharged within less than 30 days from the time of his employment, before one month's wages were earned, and was paid off in accordance with the statute.

At the time of his discharge he was paid all his wages earned to date of discharge and in addition thereto one month's extra wages as compensation for his discharge.

The libellant having been discharged and these payments having been made under and in accordance with the above-quoted section of the Revised Statutes (R., 22, 24, 26), petitioners' contention throughout has been that the statute fixed libellant's sole and only remedy and compensation under the circumstances.

6. The District Court in its first opinion of December 4, 1925, in favor of libellant, held that R. S. 4527 provided for the one month's extra wages in the way of a penalty, and did not preclude the seaman from pursuing his claim for damages for breach of contract (*The Steel Trader*, 10 Fed. (2d), 248 (R., 28 *et seq.*). A rehearing was then applied for and on December 31, 1925, the District Court refused the rehearing, and gave a second opinion in libellant's favor, in effect, overruling the first opinion.

In the second opinion it held that the statute was applicable only to cases of discharge before the commencement of the voyage and was not applicable to the present case because the libellant was discharged at a second port, even though he was discharged before one month's wages were earned (*The Steel Trader*, 10 Fed. (2d), 250) (R., 35 *et seq.*).

The facts of the case are undisputed and the sole and only issue involved concerns the proper interpretation and construction of the act of Congress above quoted.

B.

Reasons Relied on for the Allowance of the Writ.

Petitioners seek a review by this Court of the decision below and an interpretation and construction of Section 4527 of the United States Revised Statutes for the following reasons:

1. R. S. 4527 has never been before this Court for interpretation and construction and as this case involves solely and only the proper interpretation and

construction of this statute the decision of the Court of Appeals presents an important question of Federal law which has not been, but should be, settled by this Court.

2. Despite the fact that R. S. 4527 was enacted over 50 years ago and is an important statute in everyday use, it is believed and submitted that there is not a decision of any court sustaining, or even suggesting, the interpretation and construction placed upon it by the Court of Appeals in the instant decision.

3. This decision of the Court of Appeals is in conflict with the following decisions of the United States courts where the statute has been before the courts for consideration or application:

The Menton, 287 Fed., 531 (C. C. A., 4th Cir.).

Brown vs. The United States, 283 Fed., 425 (D. C., N. D. Cal.).

Hughes vs. Southern Pacific Company, 274 Fed., 876 (Ward, Circuit Judge, 2d Cir., sitting in D. C., S. D. N. Y.).

The Inland, 271 Fed. 1008 (D. C., E. D. N. Y., affirmed by C. C. A., 2d Cir., without opinion, 279 Fed., 1018).

Caffyn vs. Peabody et al., 149 Fed., 294 (D. C., W. D. Washington).

The Geo. B. Ferguson, 140 Fed., 955 (D. C. Maine).

The Staghound and *The Gamecock*, 97 Fed., 973 (D. C. Oregon).

The Glenesslin, 96 Fed., 768 (D. C. Oregon).

The Alice Blanchard, 92 Fed., 519 (D. C., N. D. Cal.).

The St. Paul, 77 Fed., 998 (Judge Addison Brown, D. C., S. D. N. Y.).

These cases will be discussed in the brief supporting the petition.

4. The Court of Appeals in this decision has placed an interpretation and construction upon R. S. 4527 contrary to and in conflict with the interpretation and construction given to that statute by the unanimous decision of the Supreme Judicial Court of Massachusetts, of which Mr. Justice Holmes was then the Chief Justice, in *Calvin vs. Huntley*, 178 Mass., 29. That court, in holding that R. S. 4527 was remedial, not penal, and consequently that the Federal courts do not have exclusive jurisdiction of suits brought by seamen for a recovery under the statute, said, at page 32:

> "Nor does the rule of damage seem unreasonable. The shipping contract calls upon the seaman to go to various places, sometimes far from home, and it may be, for instance, as in this case was the actual fact, that he may be discharged in a port distant from that where he signed the articles, or where he cannot immediately secure any other employment on board ship or elsewhere, and that in all fairness he should recover more than the amount due him for wages earned. Hence it might be deemed advisable to have this indefinite element made definite by a general law with reference to which the parties may conclusively be presumed to

> have contracted, and which, therefore, should be taken to be the law of the contract. The object of the statute is not to punish, but to provide a reasonable rule of compensation in a breach of contract. We think the statute is not penal, but remedial. It follows that the State court had jurisdiction."

5. Petitioners submit that in the decision complained of, the court has placed an interpretation and construction upon this statute contrary to the ~~clever~~ clear and unambiguous language in which the statute was drafted by Congress and reached its decision only by failing and refusing to give the language of the statute its ordinary meaning.

As the statute is clear and unambiguous, is within the constitutional authority of Congress, and does not lead to absurd or impractical results if literally enforced, there was not any room or necessity in this case for construction or interpretation and the sole function of the court was to enforce the statute according to its terms.

Caminetti vs. United States, 242 U. S., 470, 485, 490.

United States vs. Standard Brewery, 251 U. S., 210, 217.

Dewey vs. United States, 178 U. S., 510, 521.

6. The decision of the Court of Appeals overlooks and disregards entirely the historical background of R. S. 4527 and the purpose which Congress had in view in its enactment.

In the old maritime codes of Europe it was provided especially that where a seaman was wrongfully discharged at the commencement of a voyage he was entitled to a third part of the wages he might have earned.

Marine Ordinances of France, Book III, Tit. IV, Article X (Vol. 2, Peters' Admiralty Decisions, p. xxxii).

Laws of the Hanse Towns, Article XLI (Vol. 1, Peters' Admiralty Decisions, p. cv).

Prior to June 7, 1872, when Congress enacted R. S. 4527, there was no statute in the United States providing a rule of damages for wrongful discharge at the commencement of the voyage and the decisions of our courts were in hopeless conflict as to what damages to award in such cases.

Cf. "*The Rights and Duties of Merchant Seamen*," Curtis (Boston, 1841), pp. 299, 300.

"*A Treatise on the Law of Shipping*," Henry Flanders (Philadelphia, 1853), pp. 145, 146.

In England, however, Parliament, in 1854, enacted a law on the subject, Section 167 of the Merchant Shipping Act of 1854 (17 and 18 Vict., c. 104), and Congress thereupon copied that English statute almost word for word in enacting R. S. 4527. The English statute was amended, its wording being altered slightly, by Section 162 of the Merchant Shipping Act of 1894 (57 and 58 Vict., c. 60).

The English courts have held that where a wrongful discharge comes within the terms of their act it

provides for the seamen the sole and exclusive remedy and compensation therefor.

The Olympic, Probate Division (1913), p. 92.
Tindle vs. Davison (Q. B. D.), 7 Aspinall's Reports of Maritime Cases, New Series, p. 169.
Cf. Temperley's "*Merchant Shipping Acts*," 3d ed., Pt. II, Sec. 162, p. 101.

The decision of the Circuit Court of Appeals herein is in direct conflict with those decisions construing the parent statute.

7. Petitioners respectfully submit that this case is of the greatest importance in connection with the relation of vessels of the United States and seamen engaged on them under articles, for it involves a situation which frequently arises before United States Shipping Commissioners, who have to pay off discharged seamen, and if, as the petitioners contend, the decision of the Circuit Court of Appeals is wrong and is not reversed, the litigations which will arise similar to this case will add wholly unnecessarily to the already overburdened calendars of the Federal courts.

This Court, and only this Court, can conclusively define the law on this question for the guidance of Federal courts in all circuits, and it is submitted that the variance of the authorities and the essential importance of the question render it appropriate that this Court should issue a writ of certiorari requiring the case to be brought up to it for review from the Circuit Court of Appeals for the Fifth Circuit.

8. That your petitioners attach hereto as a part hereof a certified copy of the entire transcript of record of all the proceedings in the District Court and in the Circuit Court of Appeals for the Fifth Circuit.

WHEREFORE your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 4759, United States Steel Products Company, claimant and owners of S/S. "STEEL TRADER," *et al.*, appellants, *versus* Donald J. Adams, appellee, and that the said decree of the Circuit Court of Appeals for the Fifth Circuit in the said case may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

UNITED STATES STEEL PRODUCTS COMPANY AND
GLOBE INDEMNITY COMPANY,
By GEO. DENEGRE,
VICTOR LEOVY,
HENRY H. CHAFFE,
HARRY McCALL,
JAS. HY. BRUNS,
JOHN M. WOOLSEY,
Counsel for Petitioners.

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared George Denegre, who, being first duly sworn, deposes and says that he is one of the counsel for the petitioners herein; that both petitioners are corporations domiciled outside of the State of Louisiana and none of their officers are present within the State of Louisiana; that he is thoroughly familiar with the above proceedings, and that the facts therein stated are true and correct, to the best of his knowledge, information, and belief, and that he verily believes them to be true, and that in his opinion the petition is well founded and the case is one in which the prayer of the petition should be granted by this Court.

GEO. DENEGRE.

Sworn to and subscribed before me at New Orleans, La., this 6th day of August, 1926.

[SEAL.] J. C. McGEE,
Not. Pub.

We hereby certify that we have examined the foregoing petition and in our opinion it is well founded and entitled to the favorable consideration of the Court, and that it is not filed for the purpose of delay.

GEO. DENEGRE,
VICTOR LEOVY,
HENRY H. CHAFFE,
HARRY McCALL,
JAS. HY. BRUNS,
JOHN M. WOOLSEY,
Counsel for Petitioners.

New Orleans, La., August 6th, 1926.

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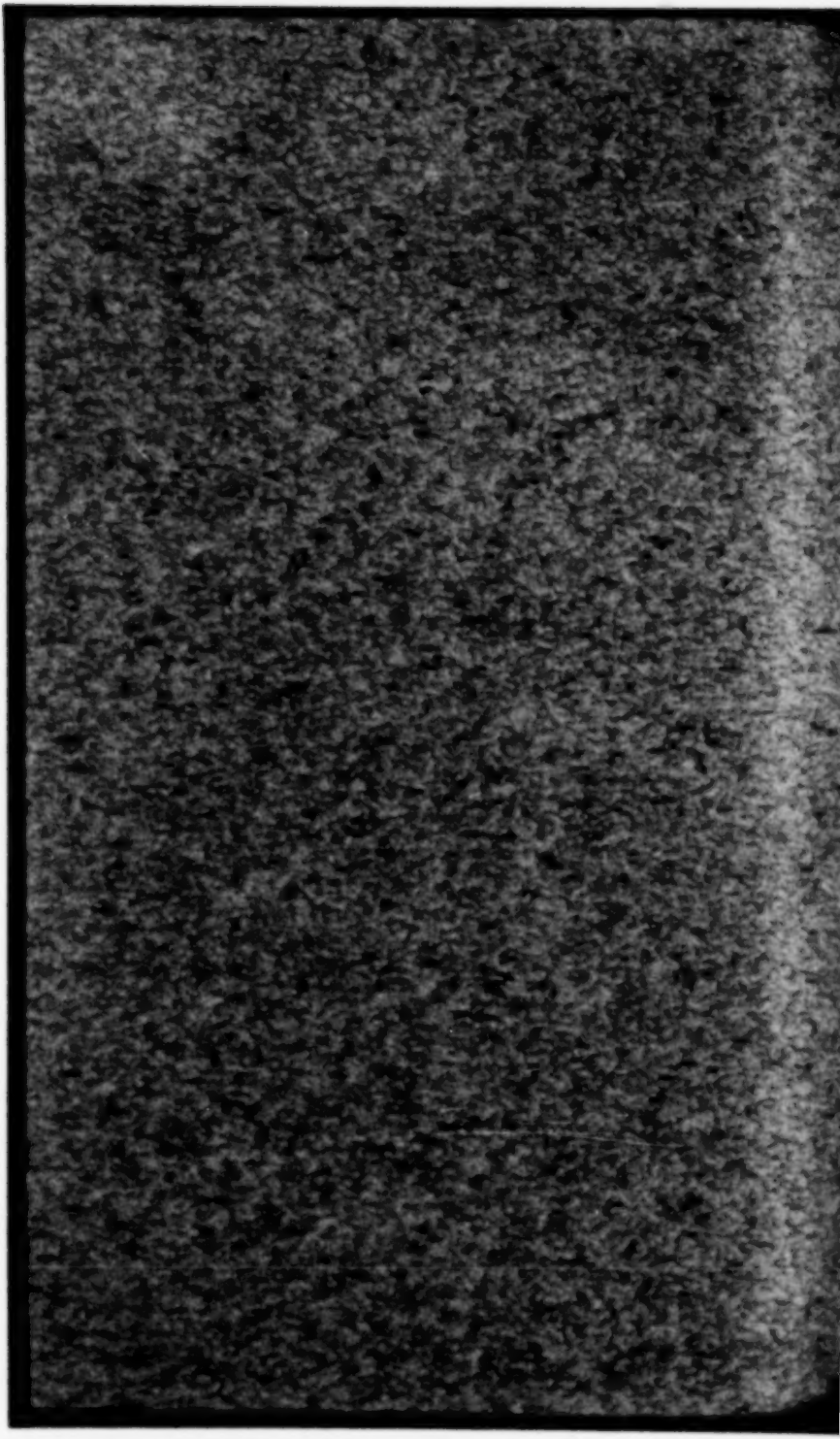

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1926.

No.

UNITED STATES STEEL PRODUCTS COMPANY, CLAIMANT AND OWNER OF S. S. "STEEL TRADER," ET AL., PETITIONERS,

vs.

DONALD J. ADAMS, RESPONDENT.

IN RE UNITED STATES STEEL PRODUCTS COMPANY AND GLOBE INDEMNITY COMPANY APPLYING FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

III.

The Opinions of the Courts Below.

The opinions in the District Court are reported as *The Steel Trader*, 10th Federal (2d), 248, 250. The opinion of the Circuit Court of Appeals has not been

reported. It is transcribed at pages 53-59 of the record.

IV.

Jurisdiction.

The date of judgment to be reviewed is May 13, 1926. The judgment is printed in the record at page 59, and it constitutes the ruling of the lower court relied on as the basis of this Court's jurisdiction, as said jurisdiction is invoked by petition for review on writ of certiorari of a decision of a Circuit Court of Appeals on the authority of Section 240 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stats., 938. Accordingly, as jurisdiction does not depend on the nature of the points embodied in such finding, these are not summarized under this heading, but are discussed under the heads of "Statement of the case" and "Argument." No cases are cited to sustain the jurisdiction, as it is clearly statutory and indisputable.

V.

Statement of the Case.

The sole and only question presented by this application involves the interpretation and construction of Section 4527 of the United States Revised Statutes (Sec. 21 of the Act of June 7, 1872, 17 Stat., c. 322, U. S. Comp. Stats. 1916, Sec. 8318), which reads as follows:

> "Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's

> **wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned."**

The question is whether the decision in this case by the Circuit Court of Appeals for the Fifth Circuit is correct in holding that, notwithstanding the clear and unambiguous language of that statute, the compensation and remedy therein allowed to a seaman wrongfully discharged within the terms of the statute are not exclusive and do not provide the sole and only remedy to which the seaman is entitled.

In this case the court held that although the seaman, Donald J. Adams, respondent herein and libellant below, had been discharged and paid off under and in accordance with the said statute, yet he was entitled to additional damages in this suit for breach of contract for his wrongful discharge.

The case arose under the following state of facts:

On or about November 29, 1921, Donald J. Adams, respondent herein and libellant and appellee below, signed articles as a seaman on the steamship "STEEL TRADER" for a trip from New Orleans to Greece and the far east and return (R., 2, 22, 27).

On December 12, 1921, at Port Arthur, Texas, on the voyage out, Adams was wrongfully discharged from

the vessel and paid off under and in accordance with R. S. 4527, before a United States Shipping Commissioner. He was paid the wages he had earned to the date of his discharge, and also one month's extra wages, as provided in the statute (R., 22, 24, 26).

On May 24, 1922, Adams filed his libel in admiralty in this suit in the United States District Court for the Eastern District of Louisiana, proceeding *in rem* against the steamship "STEEL TRADER" and claiming damages for breach of contract based upon his wrongful discharge from the vessel (R., 2).

Thereupon the United States Steel Products Company, one of the petitioners herein, claimed the vessel as owner (R., 8) and released her from seizure by giving its bond as principal with the Globe Indemnity Company, the other petitioner herein, as surety thereon (R., 9).

The facts of the case were undisputed and the suit was defended on the merits solely on the ground that Adams had been discharged and paid off legally and exactly in accordance with the terms of R. S. 4527 (R., 22, 24, 26), and the vessel and or her owners had consequently complied with and fulfilled all of their obligations and liabilities to him.

On December 4, 1925, the District Court rendered its first opinion in favor of Adams, holding that R. S. 4527 provided only a penalty and did not destroy the seaman's right to damages for ordinary breach of contract (*The Steel Trader*, 10 Fed. (2d), 248); (R., 28 *et seq.*).

On December 31, 1925, the District Court, in refusing an application for rehearing, rendered a second opinion in favor of libellant on entirely different grounds, to wit, that the statute applied only to cases of discharge before the commencement of the voyage and was not applicable to this case, where the discharge occurred at a second port after the voyage had begun (*The Steel Trader*, 10 Fed. (2d), 250); (R., 35 *et seq.*).

A decree was then entered in favor of Adams and against the two petitioners herein in an amount covering the wages libellant would have earned to the end of the voyage upon which he had shipped if he had not been so discharged, less a credit for the one month's extra wages paid him under the statute (R., 41, 42).

Thereupon an appeal was taken by petitioners to the Circuit Court of Appeals for the Fifth Circuit, which affirmed the decree of the District Court and in its opinion of May 13, 1926, held that the remedy and compensation provided for in R. S. 4527 are not exclusive and are meant to cover only the payments due at the time of discharge, leaving the seaman his ordinary remedy for damages for breach of contract in addition to this statutory compensation (R., 53 *et seq.*).

It is to review this decision that this application for a writ of certiorari is being made to this Court.

VI.

Specification of Errors.

1. The Circuit Court of Appeals erred in finding and holding that Rev. Stat., Sec. 4527, did not provide the

sole and only remedy and the total compensation to which a seaman on articles is entitled, provided he is wrongfully discharged before one month's wages are earned, without his consent, and in holding that the statute was not exclusive in describing a remedy or the amount of compensation, and that a seaman discharged under such circumstances could recover, in addition to the amount of the wages earned to the date of his discharge and the extra month's wages provided in the statute, additional sums as compensation for damages for his wrongful discharge.

2. The Circuit Court of Appeals erred in affirming the decree of the District Court in favor of libellant, respondent here, and in not finding and holding that Rev. Stat., Sec. 4527, provided the exclusive remedy to which libellant was entitled; and as it was admitted, and the court found, that libellant had been paid by and received from the vessel and her owners, petitioners here, upon his discharge, the full amount provided by that statute, the court erred in not rendering a decree in favor of petitioner reversing the District Court and dismissing libellant's suit.

VII.

ARGUMENT.

It is submitted that the Circuit Court of Appeals for the Fifth Circuit erred in interpreting and construing as it did Section 4527 of the United States Revised Statutes, because:

1. Its decision is contrary to and in conflict with the Federal and State court decisions which have uniformly construed and enforced the statute as providing the exclusive remedy and compensation covering those discharges coming within its terms; and there is no decision of record sustaining, or even suggesting, the correctness of the construction placed upon the statute by the Court of Appeals.

2. The statute is clear and unambiguous and within the constitutional authority of Congress. To enforce and apply it, giving the language used therein by Congress its ordinary meaning, would not lead to any absurd or impractical results. There was no reason why the Circuit Court of Appeals should place its own interpretation and construction on the statute. The court should have enforced the law literally as written by Congress.

3. In view of the historical development and background of R. S. 4527, a proper construction and interpretation of the statute should have led the court to find that Congress had passed this law for the express purpose of providing a fixed and settled exclusive remedy for American seamen who might be wrongfully discharged under the circumstances embraced within the statute, which would include this case.

A.

Conflict with Prior Federal and State Court Decisions.

Revised Statute 4527 has never been before this Court for interpretation or construction, and it is be-

lieved has only been mentioned or discussed in one decision, namely, in *Tucker vs. Alexandroff*, 183 U. S., 424. There, in discussing the rights and duties of seamen under their shipping articles, the Court said, at page 444:

> "The rights of the seamen in this connection are protected by Section 4527, which declares that 'any seaman who has signed an agreement and who is afterwards *discharged before the commencement of the voyage* or before one month's wages are earned,' shall be entitled to compensation."

In writing the opinion, Mr. Justice Brown evidently concluded that the statute provided a fixed compensation for seamen discharged at the commencement of the voyage.

The Supreme Judicial Court of Massachusetts, in a unanimous decision, in which Mr. Justice Holmes, at that time Chief Justice of that court, concurred, construed this statute in the manner for which the petitioners contend, and not as interpreted by the Circuit Court of Appeals. In *Calvin vs. Huntley*, 178 Mass., 29, a seaman brought suit under R. S. 4527, for wrongful discharge, claiming the compensation therein fixed. The jurisdiction of the court was challenged on the ground that the Federal courts had exclusive jurisdiction under Section 711 of the Revised Statutes of the United States because the suit was for a penalty or forfeiture under the laws of the United States. The court held that the statute was not penal, but remedial, and said (pp. 31, 32):

"In each of these actions the plaintiff, a seaman, seeks to recover against the master of the vessel the wages earned by him up to the time of his discharge, and in addition thereto a sum equal to one month's wages, as provided in Rev. Stat. U. S., Sec. 4527 * * *.

"But it is urged that this is an action to recover a forfeiture or penalty, within the meaning of Rev. Stat. U. S., Sec. 711, cl. 2, which provides that the Federal courts shall have exclusive jurisdiction 'of all suits for penalties and forfeitures incurred under the laws of the United States.' Section 4527, which applies to this action, is as follows: * * * It is to be observed that the language of the section is not that ordinarily used in a penal statute. Neither the word 'penalty' nor 'forfeiture' is in it. Moreover, it does not provide punishment for the commission of a criminal offense, nor for the neglect of a statutory duty, nor even for the neglect of a duty in the performance of which the public, as such, may be supposed to have an interest. It speaks not of punishment, but of compensation. Its object is to protect the seaman from loss, rather than to punish the master for discharging him. The remedy is given to the seaman alone, and its plain purpose is to furnish a clear and well-defined rule of damages, as between him and the master, for a breach of contract in which the seaman and the master or owner are the only persons interested.

"The statute, being the law of the jurisdiction where the contract was made, is the law with reference to which the parties must be presumed to have contracted, or, in other words,

it is the law of the contract, and it is as much a part of the contract as though inserted therein.

"Nor does the rule of damage seem unreasonable. The shipping contract calls upon the seaman to go to various places, sometimes far from home, and it may be, for instance, as in this case was the actual fact, that he may be discharged in a port distant from that where he signed the articles, or where he cannot immediately secure any other employment on board ship or elsewhere, and that in all fairness he should recover more than the amount due him for wages earned. Hence it might be deemed advisable to have this indefinite element made definite by a general law with reference to which the parties may conclusively be presumed to have contracted, and which, therefore, should be taken to be the law of the contract. The object of the statute is not to punish, but to provide a reasonable rule of compensation in a breach of contract. We think the statute not penal, but remedial. It follows that the State court had jurisdiction."

In the Court of Appeals of New York, in 1924, there was the case of *Cox vs. Lykes Brothers et als.*, 237 N. Y., 376. This was a suit for the extra wages under Section 4529 of the United States Revised Statutes. The court mentioned with approval the construction placed upon R. S. 4527 by the Massachusetts Supreme Court in the *Calvin case, supra*. The court said, at page 379:

"The case cited from Massachusetts is authority for the ruling that an action for extra

> wages under Section 4527 of the United States Revised Statutes (U. S. Comp. St., Sec. 8318), which does not differ in essentials from Section 4529, may be maintained in the State courts, and is not an action for a penalty."

While the interpretation and construction of this statute has never, before the present case, been necessary for a decision by a United States Circuit Court of Appeals, it is believed that in every case where the act has been mentioned, considered or applied by the United States courts, it has always been regarded as the exclusive remedy of seamen wrongfully discharged within the terms of the statute.

In such cases no other or further claim for damages for such a discharge has been made by counsel or allowed by the courts.

The Menton, 287 Fed., 531 (C. C. A., 4th Cir.).

Brown vs. The United States, 283 Fed., 425 (D. C., N. D. Cal.).

Hughes vs. Southern Pacific Company, 274 Fed., 876 (Ward, Circuit Judge, 2d Cir., sitting in D. C., S. D. N. Y.).

The Inland, 271 Fed., 1008 (D. C., E. D. N. Y., affirmed by C. C. A., 2d Cir., without opinion, 279 Fed., 1018).

Caffyn vs. Peabody et al., 149 Fed., 294 (D. C., W. D. Washington).

The Geo. B. Ferguson, 140 Fed., 955 (D. C. Maine).

The Staghound and The Gamecock, 97 Fed., 973 (D. C., Oregon).

The Glenesslin, 96 Fed., 768 (D. C., Oregon).

The Alice Blanchard, 92 Fed., 519 (D. C., N. D. Cal.).

The St. Paul, 77 Fed., 998 (Judge Addison Brown, D. C., S. D. N. Y.).

In *Caffyn vs. Peabody et al.*, 149 Fed., 294, a suit was brought by a chief engineer for wrongful discharge from a steamer on the Yukon River under a contract of employment at $250 a month and return expenses. Libellant sued for his full wages and the expenses of his return from the Yukon. The court held the discharge was illegal, and, as more than one month's wages were earned, R. S. 4527 did not apply, but in awarding damages the court said, at page 297:

> "and, having been discharged without his consent, and without fault on his part justifying such discharge, the court allows him as compensation one additional month's wages. I hold this award to be legal and just, by analogy to the measure of compensation prescribed by Section 4527, U. S. Rev. St."

In *The Glenesslin*, 96 Fed., 768, the seamen had not signed articles or performed services, and the court held for that reason they had no lien on the vessel, saying, at page 768:

> "Where services have not, in fact, been rendered, there can be no lien as for wages, except in the cases provided for in Section 4527 of the Revised Statutes, where a shipping agreement has been signed, and the seaman is thereafter

> **unwarrantably discharged by the master. In such cases a sum equal to one month's wages may be recovered."**

In *The Alice Blanchard*, 92 Fed., 519, the libellant had signed articles as cook for a number of voyages. On the day agreed he presented himself for work at noon, but the master contended he should have reported at 8 a. m., and put him ashore and sailed away. Libellant sued for wages (amount not stated) for wrongful discharge. The court held the discharge wrongful, and said (p. 521):

> "The libellant was to receive $50 per month as wages, and under Section 4527 of the United States Revised Statutes he is entitled to recover in this action a sum equal to the amount agreed to be paid him as wages for one month, and costs of suit. So ordered."

This decision is directly in point and holds that the remedy provided by the statute is exclusive.

It is submitted that in addition to the cases already cited, R. S., 4527 has been before the courts only in the following cases, in no one of which has the statute been construed or interpreted according to the decision of the Circuit Court of Appeals herein, viz:

The Donna Lane, 299 Fed., 977 (D. C., W. D. Washington).

The Great Canton, 299 Fed., 953 (D. C., E. D. N. Y.).

The Quaker City, 290 Fed., 409 (D. C., Maryland).

Manhattan Canning Co. vs. Wilson, 205 Fed., 996, and 210 Fed., 898 (D. C., W. D. Washington), affirmed 217 Fed., 41 (C. C. A., 9th Cir.).

The August Belmont, 153 Fed., 639 (D. C., S. D. Ga.).

The Joseph B. Thomas, 136 Fed., 693 (D. C., E. D. Pa.).

The John R. Bergen, 122 Fed., 98 (D. C., S. D. N. Y.).

The Charles D. Lane, 106 Fed., 746 (D. C., Washington).

The Villa y Herman, 101 Fed., 132 (D. C., S. D. Ala.).

Dary vs. The Caroline Miller, 36 Fed., 507 (D. C., S. D. Ala.).

The Schooner Jefferson Borden, 6 Fed., 301 (D. C., Delaware).

The Circuit Court of Appeals for the Fifth Circuit, therefore, has decided herein an important question of Federal law, construing an important Federal statute, and has rendered a decision in conflict with the weight of authority as established by the decisions of the United States courts and of such State courts as have had the question before them.

B.

The Statute is Clear and Unambiguous.

The Circuit Court of Appeals erred in holding that the will and intention of Congress were not expressed in the statute in clear language, free from doubt.

The whole basis of the court's decision rests upon the following excerpts from its opinion:

> 1. "To say the least, the language of the provision in question does not clearly manifest a purpose to give to the payment to a seaman wrongfully discharged within the time mentioned of the amount of any wages he may have earned and in addition a sum equal to one month's wages the effect of satisfying all liability incurred by wrongfully discharging him" (R., 54).
>
> 2. "The language of R. S., Sec. 4527, is consistent with an intention to treat the amount required to be paid to the wrongfully discharged seaman as compensation for the service already rendered by him. Certainly that language falls far short of expressly absolving the vessel, on the payment of such amount, from her liability for damages for breaching the contract evidence by the shipping articles. That provision determines what is payable to the wrongfully discharged seaman at the time of his discharge" (R., 56, 57).

The court holds, for the quoted reasons, that because Congress has not specifically stated that the remedy provided in the statute shall be exclusive or that the seaman may not recover in addition to the amounts provided in the statute further sums in the way of damages for breach of contract, the act must be construed in favor of the seaman and against any such restriction of it.

This interpretation overlooks the fact that Congress

in drafting the act has twice used the word "*compensation*" to describe the one month's extra wages allowed in the act for wrongful discharge. The word "*compensation*" in both ordinary use and as a legal term means payment, consideration, remuneration, or reward. In enacting the statute, Congress, as recognized by the court, had the intention of making provision for seamen discharged at the commencement of a voyage and if Congress intended to provide for a definite and fixed rule of damages it could not have used a more appropriate word than "*compensation.*"

If it had been intended by this statute merely to provide a penalty or temporary bonus to be paid to the seaman at the time of his discharge, reserving to him in addition the right to claim additional damages for breach of contract, Congress would certainly not have used so strong or clear defined a word as "*compensation*" and would have placed in the statute in clear words a reservation of the seaman's rights in that respect.

Congress, in providing that under the circumstances named the seaman should be allowed "in addition to any wages he may have earned a sum equal in amount to one month's wages as *compensation*," clearly negatived the idea that the remedy should be in addition to any other compensation, whether for damages for breach of contract or otherwise.

It is submitted that Congress has provided in this statute a clear-defined constitutional remedy for its wards, the seamen. The remedy is not an unusual one.

By section 4526 of the Revised Statutes of the

United States Congress has provided that in case of the loss or wreck of a vessel the seaman is entitled only to his wages for the services rendered prior to the loss or wreck of the vessel and he is entitled to no further wages regardless of what the terms of his contract might have been.

In section 4582 of the United States Revised Statutes it is provided that if a vessel is sold abroad the seaman is entitled to the wages due him and is to be provided with passage home or its equivalent.

The constitutionality of this statute has never been questioned, but in *Robertson vs. Baldwin*, 165 U. S., 275, this Court held that sections 4598 and 4599 of the Revised Statutes of the United States, requiring seamen to carry out their contracts in accordance with the shipping articles and making them liable to arrest for failure so to do, were constitutional and those sections are also a part of this very Act of June 7, 1872, 17 Stat., 262, which contains R. S. 4527.

This Court said at page 287:

> * * * "In this act and the amendments thereto very careful provisions are made for the protection of seamen against the frauds and cruelty of masters, the devices of boarding-house keepers, and, as far as possible, against the consequences of their own ignorance and improvidence. At the same time discipline is more stringently enforced by additional punishments for desertion, absence without leave, disobedience, insubordination and barratry. Indeed, seamen are treated by Congress, as well as by the Parliament of Great Britain, as deficient in

> that full and intelligent responsibility for their acts which is accredited to ordinary adults, and as needing the protection of the law in the same sense which minors and wards are entitled to the protection of their parents and guardians; * * * The ancient characterization of seamen as 'wards of admiralty' is even more accurate now than it was formerly."

It is submitted that Congress having acted within its constitutional authority in clear terms providing the remedy to which its particular wards, the seamen, are entitled in certain cases, the Court of Appeals erred in failing and refusing to carry out the will of Congress by enforcing the act as it reads. In so doing that court acted in conflict with the established decisions of this Court.

In Caminetti vs. United States, 242 U. S., 470, it was said, at page 485:

> "It is elementary that the meaning of a statute must in the first instance be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the law-making body which passed it, the sole function of the courts is to enforce it according to its terms." * * *
>
> "Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion."

And, again, at page 490:

> "In other words, the language being plain, and not leading to absurd or wholly impractical consequences, it is the sole evidence of the ultimate legislative intent."

In *Dewey vs. United States*, 178 U. S., 510, this Court said, at page 521:

> "This Court has nothing to do with questions of mere policy that may be supposed to underlie the action of Congress. What is termed the policy of the Government in reference to any particular subject of legislation, this Court has said, 'is generally a very uncertain thing, upon which all sorts of opinions, each variant from the other, may be formed by different persons. It is a ground much too unstable upon which to rest the judgment of the Court in the interpretation of statutes.' Hadden *vs.* The Collector, 5 Wall., 107, 111. Our province is to declare what the law is, and not, under the guise of interpretation or under the influence of what may be surmised to be the policy of the Government, so to depart from sound rules of construction as in effect to adjudge that to be law which Congress has not enacted as such. Here, the language used by Congress is unambiguous. It is so clear that the mind at once recognizes the intent of Congress. Interpreted according to the natural import of the words used, the statute involves no absurdity or contradiction, and there is consequently no room for construction. Our duty is to give effect to the will of Congress, as thus plainly expressed."

C.

The History of R. S. 4527.

The origin of R. S., Sec. 4527, dates back to the early maritime codes of Europe. In the *Marine Ordinances of France*, Book III, Tit. IV, Article X (Vol. 2, Peters' Admiralty Decisions, p. XXXII), it was provided:

> "If a master dismiss a mariner without a sufficient cause before the voyage is begun, he must pay him one-third of his wages; and if after the voyage is begun, he shall pay his whole wages, together with his charges for returning to the place of his departure." * * *

Article XLI of the *Laws of the Hanse Towns* (Vol. I, Peters' Admiralty Decisions, p. CV), provided:

> "If a mariner behaves himself ill the master may turn him off; but if he discharges him for no reasons before the voyage begins, he shall pay him a third part of his wages, but shall not charge it in the ship's account."

These fixed remedies were not carried into our early maritime laws.

In 1841, George Ticknor Curtis, in his leading text book on the subject, "*The Rights and Duties of Merchant Seaman*," said, at page 299:

> "It does not appear that this proportion of one-third has been adopted in our law, in cases of wrongful discharge before the vessel sails. Damages would undoubtedly be recoverable, in an action of the case at common law, or by a

> libel in the admiralty, for the breach of the contract, to be regulated by the circumstances of the case." * * *

The American authorities all recognized that the courts differed and were in some confusion as to what was the proper measure of damages to award to seamen wrongfully discharged. In 1853, Henry Flanders, in his "*Treatise on the Law of Shipping*," said, at pages 145 and 146:

> "It may be superfluous to add, that if the master improperly discharges a seaman, he and the owner become responsible for damages. The measure of damages in such a case is actual compensation for the injury, according to the circumstances. The amount of damages is neither to be determined by the amount of wages which would be due, computed to the successful termination of the voyage, nor computed to the time of his own return to his country, but should be an indemnity for the actual injury sustained by the breach of the contract."

In 1854 the English Parliament enacted its first law on the subject, Section 167 of the Merchant Shipping Act of 1854 (17 and 18 Vict., c. 104). This act read as follows:

> "Any seaman who has signed an agreement, and is afterwards discharged before the commencement of the voyage, or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or

> owner, in addition to any wages he may have earned, due compensation for the damage thereby caused to him, not exceeding one month's wages, and may, on adducing such evidence as the court hearing the case deems satisfactory of his having been so improperly discharged as aforesaid, recover such compensation as if it were wages duly earned."

Congress, in drafting R. S. 4527, copied the language of this statute almost *verbatim*.

This English statute was amended in 1894 and is now Section 162 of the Merchant Shipping Act of 1894 (57 and 58 Vict., c. 60), and reads:

> "If a seaman, having signed an agreement, is discharged otherwise than in accordance with the terms thereof before the commencement of the voyage, or before one month's wages are earned, without fault on his part justifying that discharge, and without his consent, he shall be entitled to receive from the master or owner, in addition to any wages he may have earned, due compensation for the damage caused to him by the discharge not exceeding one month's wages, and may recover that compensation as if it were wages duly earned."

The English courts, contrary to the decision herein of the Circuit Court of Appeals, *have held that the remedy provided by their statute is exclusive* and controls all cases of discharge falling within the terms of the statute.

Tindle vs. Davison (Q. B. D.), 7 Aspinall's Reports of Maritime Cases, New Series, p. 169.

The Olympic (Court of Appeal), Probate Division (1913), p. 92.

And cf. Temperley's "*Merchant Shipping Acts*," 3rd Ed., Pt. II, Sec. 162, p. 101.

Maclachlan's "*Law of Shipping*," 6th Ed., by Hart and Bucknill, p. 177.

VIII.

Conclusion.

We submit that this case presents a question of law of great importance to the merchant shipping of the United States, to seamen and shipowners alike. It involves a question that frequently arises before the United States Shipping Commissioners in the discharge of American seamen.

We further submit again that for the reasons herein set forth the conclusion reached by the Circuit Court of Appeals for the Fifth Circuit is erroneous:

1. Because it is contrary to the other adjudged cases on the point;

2. Because it is contrary to the clear words of the statute;

3. Because the court's conclusion disregards the historical background of the statute and the reasons and purposes behind its enactment.

A decision in accordance with petitioners' contentions will prevent endless small litigations in the Federal courts.

We therefore respectfully urge that this case is peculiarly one calling for the exercise by this Court of its supervisory powers, in order that the meaning of this Federal maritime law may be fixed and uniform, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Circuit Court of Appeals and should finally reverse it.

Respectfully submitted,

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New Orleans, August 6, 1926.

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SUPREME COURT OF THE UNITED STATES.

UNITED STATES STEEL PRODUCTS COMPANY, Claimant and Owner of the Steamship *Steel Trader, et al.*, Petitioners, *against* DONALD J. ADAMS, Respondent.	October Term, 1927. No. 106.

BRIEF FOR CLAIMANTS PETITIONERS.

STATEMENT OF CASE.

This case comes here on a *writ of certiorari* to the Circuit Court of Appeals for the Fifth Circuit, granted November 1, 1926, 273 U. S. 680.

The writ seeks to review a decree of the United States Circuit Court of Appeals for the Fifth Circuit made May 13, 1926, which affirmed a decree in favor of Adams in the United States District Court for the Eastern District of Louisiana, rendered December 31, 1925, by Judge Burns and signed January 31, 1926.

This decree was entered, according to the practice of the Fifth Circuit, against the stipulators on the bond by which the steamship was released from seizure, namely, the United States Steel Products Company, claimant and principal, and the Globe Indemnity Company as surety. *Decree*, p. 27.* Both these parties are petitioners here.

* The references in this brief are to pages in the Record unless otherwise stated.

The two opinions of Judge Burns in the District Court are reported as "*The Steel Trader*", 10 Fed. (2nd) 248, and 250 and are found in the Record at pages 17-21; 22-27.

The opinion in the Circuit Court of Appeals is reported as "*The Steel Trader*", 13 Fed. (2nd) 614 and is printed here at pages 33 to 39 of the Record.

The formal decree of the Circuit Court of Appeals, against which this writ was issued, was made on May 13, 1926. *Judgment*, p. 39.

The only question involved in this case here is the proper interpretation and construction of Section 4527 of the United States Revised Statutes, which was Section 21 of the Act of June 7, 1872, 17 Stat. L. 266. This Section now reads as follows (italics ours):

> "*Any seaman* who has signed an agreement and is afterward *discharged before the commencement of the voyage or before one month's wages are earned*, without fault on his part justifying such discharge, and without his consent, *shall be entitled to receive* from the master or owner, in addition to any wages he may have earned, a *sum equal in amount to one month's wages as compensation*, and may, on adducing evidence satisfactory to the court hearing the case, of having been improperly discharged, recover *such compensation* as if it were wages duly earned."

The facts, so far as here relevant, are as follows:

On or about November 29, 1921, Donald J. Adams, respondent herein and libelant and appellee below, signed articles as a seaman on the steamship *Steel Trader* for a trip from New Orleans to Greece and the Far East and return. Pp. 1, 7, 17, 33.

On December 12, 1921, at Port Arthur, Texas, after the voyage out had begun, Adams was, as the courts below found, wrongfully discharged from the vessel and was paid off under and in accordance with R. S. §4527, before a United States Shipping Commissioner. He was paid the wages he had earned to the date of his discharge, and also one month's extra wages, as provided in the statute. Pp. 9, 13, 18, 33.

On May 24, 1922, Adams filed his libel in admiralty in this suit in the United States District Court for the Eastern District of Louisiana, proceeding *in rem* against the steamship *Steel Trader*, and claiming damages for breach of contract based upon his wrongful discharge from the vessel. P. 1.

Thereupon the United States Steel Products Company, one of the petitioners herein, claimed the vessel as owner, p. 5, released her from seizure by giving its bond as principal with the Globe Indemnity Company, the other petitioner herein, as surety thereon, pp. 6, 27, and answered the libel, setting up payment as above set forth. P. 7.

The facts of the case were undisputed and the suit was defended, on the merits, solely on the ground that Adams had been discharged and paid off fully and legally, precisely in accordance with the terms of R. S. §4527, pp. 8-9, and the vessel and/or her owners had consequently complied with and fulfilled all their obligations and liabilities to him. *Answer*, p. 9.

On December 4, 1925, the District Court rendered its first opinion in favor of Adams, holding that R. S. §4527 provided only for a penalty and did not destroy the sea-

man's right to damages for ordinary breach of contract. *The Steel Trader*, 10 Fed. (2d) 248; pp. 17-21.

On December 31, 1925, the District Court, in refusing an application for rehearing, rendered a second opinion in favor of libelant on entirely different grounds, to wit, that the statute applied only to cases of discharge before the commencement of the voyage and was not applicable to this case, where the discharge occurred at a second port after the voyage had begun. *The Steel Trader*, 10 Fed. (2d) 250; pp. 22-27.

In the first opinion Judge Burns refers to the month's wages of $80 as "already paid him [the libellant] as a penalty." P. 21. In his opinion on rehearing he said:

> "The inadvertent use of the words 'as a penalty' in the concluding paragraph of the original memorandum opinion filed December 4th, 1925, is to be taken as amended so as to read 'erroneously paid as extra compensation.'" Pp. 26-27.

Thus the District Judge seems to have realized that unless he held the statute inapplicable, as he did in his second opinion, he would have to recognize the payment of a month's wages as "*compensation*" for the damages arising out of the breach of contract.

A decree was then entered in favor of Adams and against the two petitioners herein, in an amount covering the wages which the libelant would have earned to the end of the voyage upon which he had shipped if he had not been discharged, less a credit for the one month's extra wages paid him under the statute. P. 27.

Thereupon an appeal was taken by petitioners to the Circuit Court of Appeals for the Fifth Circuit, which affirmed the decree of the District Court and, in its opinion of May 13, 1926, held that the remedy and compensation provided for in R. S. §4527 are not exclusive and are meant to cover only the payments due at the time of discharge, leaving the seaman his ordinary remedy for damages for breach of contract in addition to this statutory compensation. Pp. 35-39.

The question involved here, therefore, is solely a question of construction, namely, whether the Circuit Court of Appeals for the Fifth Circuit was right in affirming the decision of Judge Burns, and in holding that, notwithstanding the clear language of Section 4527, Adams was entitled to recover damages for breach of contract in spite of the fact that he had been paid off before a United States Shipping Commissioner in accordance with the provisions of Section 4527, and had received the sum provided for as "*compensation*" in that statute for his wrongful discharge.

The case therefore is within a very narrow compass.

Summarized, the assignments of error are that the Court erred in holding

1. That Section 4527 was not applicable to the case, and

2. That the amount of compensation provided for therein and paid in this case to Adams did not constitute an extinguishment of his claim against the steamship for damages for wrongful discharge.

The contentions of the petitioner are that in thus holding the Circuit Court of Appeals failed

1. To consider the history of the legislation which resulted in the Act of June 7, 1872, of which Act Section 4527 was Section 21,

2. That in construing Section 4527 the Court indulged in wrongful interpretation of the canons of construction, and

3. That in its decision the Court disregarded the judicial history of Section 4527 and other cognate sections of the Act of June 7, 1872.

FIRST POINT.

THE COURT BELOW ERRED IN ITS DECISION BECAUSE IT DISREGARDED THE HISTORY OF THE SECTION—R. S. 4527—WHICH IT WAS CONSTRUING.

The Act of June 7, 1872, c. 322, 17 Stat. L. 262, of which R. S. §4527 was a part, being Section 21 thereof, was referred to by Mr. Justice McReynolds in *Inter-Island Steam Navigation Co.* v. *Byrne*, 239 U. S. 459 (1915), at page 460 as follows:

> "By a comprehensive act containing sixty-eight sections, approved June 7, 1872, c. 322, 17 Stat. 262, and entitled 'An Act to authorize the appointment of shipping commissioners by the several circuit courts of the United States, to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen,' Congress prescribed regulations concerning the employment, wages, treatment and protection of seamen. • • •"

The section of this Act under consideration in this case had its immediate ancestry in the British Merchant Shipping Act of 1854, 17 & 18 Vict., c. 104.

Section 167 of the Merchant Shipping Act of 1854, reads as follows:

> Sec. 167. Any seaman who has signed an agreement, and is afterwards discharged before the commencement of the voyage, or before one month's wages are earned, without fault on his part justifying such discharge and without his consent, shall be entitled to *recover* from the master or owner, in addition to any wages he may have earned, *due compensation for the damage thereby caused to him, not exceeding one month's wages*, and may, on adducing such evidence as the Court hearing the case deems satisfactory of *his* having been so improperly discharged as aforesaid, recover such compensation as if it were wages duly earned.

The parts in italics are the passages which are not the same in the Merchant Shipping Act and in Section 21 of the Act of June 7, 1872.

The word "recover" italicized in the sixth line of Sec. 167 of the Merchant Shipping Act, was changed to "receive", both in Section 21 of the Act of June 7, 1872, and in R. S. §4527.

The phrase beginning "*due compensation*" and ending "*one month's wages*" was changed in the American Act to "*a sum equal in amount to one month's wages as compensation.*"

The word "*his*" italicized in the eleventh line of Sec. 167 of the Merchant Shipping Act was omitted from the American Act.

The passage commencing with "*adducing*" and ending "*as aforesaid*" in Section 21 of the original Act of June 7, 1872, was the same as in the English Statute, but it was altered in the first edition of the Revised Statutes, 1873-74, Vol. II, page 881, to read:

> "On adducing evidence satisfactory to the Court hearing the case, of having been improperly discharged."

This alteration was carried on into the second edition of the Revised Statutes, 1878, page 875, and appears in the present United States Code, Title 46, Section 594.

The English Courts have construed Section 167 of the Merchant Shipping Act in accordance with the contention of the petitioner-claimant.

In the case of *Tindle* v. *Davison* (Queen's Bench Division, 1892), 66 L. T. (N. S.) 372; the plaintiff was a seaman who signed for a voyage from Sunderland to Bilbao and back, for any period not exceeding six months. The voyage terminated in twenty-one days and plaintiff was discharged at Sunderland. He sued for one month's extra wages under the Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104), Sec. 167, and this was awarded in the Magistrates' Court. The Queen's Bench Division reversed the Magistrates and held that there had not been a wrongful discharge.

In the course of his opinion Wright, J., said, however, at page 374 (italics ours):

> "• • • The meaning of the section (Sec. 167) is that, when a seaman is improperly discharged, he is to have due compensation as to a month's

> wages *in lieu of his right of action*, unless he has earned a month's wages, in which case the section does not apply."

That the purpose of the legislation was to bring over into our law the provisions of the British Merchant Shipping Act is indicated by the fact that in the Congressional Globe for the Second Session of the Forty-second Congress, Mr. Conger, of Michigan, who was sponsoring the Bill, said on March 20, 1872, at page 1836 of the Congressional Globe—

> "* * * The object of the bill, as indicated in its title, is to protect seamen by legal regulations as to the mode of their shipping and discharge, in lack of any laws now existing on the subject. The bill is substantially the Shipping-Commissioner's Act of England, with such changes as have been deemed necessary to adapt it to this country. * * *"

R. S. Sec. 4527, which was Section 21 of the Act then under discussion was not debated, although various other sections were debated. *Congressional Globe*, p. 2172, and following.

The legislative history of the Act is given more fully in Appendix II in this brief.

In both the parent British Statute and in R. S. §4527 the payment is compensation and is the seamen's exclusive remedy, but in our act the compensatory damages are fixed at one month's wages, whereas in England seamen, in cases within the act, recover damages as compensation on a scale to be determined by the Court but not to exceed one month's wages.

Though the amount paid may be different under the two acts, after payment the result is the same—the seaman has received "compensation".

The principal maritime nations of continental Europe have, in their codes, provisions of a similar nature which we have embodied in Appendix III hereof.

The object of this legislation in all countries is to give seamen a simple and summary method of proving damages in the event of wrongful discharge, before a month's wages have been earned, or before the sailing of his ship, as the particular statute may provide.

In this case the Courts below, it is submitted, have held an American shipowner, who has complied with R. S. §4527 in all respects, to a liability many times greater than that statute, or its British prototype, would permit.

SECOND POINT.

THE COURT BELOW ERRED IN CONSTRUING A CLEARLY WORDED STATUTE AS AMBIGUOUS, AND IN DISREGARDING ENTIRELY A WORD OF SUCH A DEFINITE AND TECHNICAL MEANING AS "COMPENSATION."

The whole basis of the Court's decision rests upon the following excerpts from its opinion:

> 1. "To say the least, the language of the provision in question does not clearly manifest a purpose to give to the payment to a seaman wrongfully discharged within the time mentioned of the amount of any wages he may have earned and in addition a sum

equal to one month's wages the effect of satisfying all liability incurred by wrongfully discharging him." (*Record*, p. 34.)

2. "The language of R. S., Sec. 4527, is consistent with an intention to treat the amount required to be paid to the wrongfully discharged seaman as compensation for the service already rendered by him. Certainly that language falls far short of expressly absolving the vessel, on the payment of such amount, from her liability for damages for breaching the contract evidenced by the shipping articles. That provision determines what is payable to the wrongfully discharged seaman at the time of his discharge." (*Record*, pp. 36-37.)

The Court holds, for the quoted reasons, that because Congress has not specifically stated that the remedy provided in the statute shall be exclusive or that the seaman may not recover in addition to the amounts provided in the statute further sums in the way of damages for breach of contract, the act must be construed in favor of the seaman and against any such restriction of it.

This interpretation overlooks the fact that Congress in drafting the act has twice used the word "*compensation*" to describe the one month's extra wages allowed in the act for wrongful discharge.

The word "*compensation*" in both ordinary use and as a legal term means payment, consideration, remuneration, or reward.

In the case of *Bauman* v. *Ross*, 167 U. S. 548 (1897), this Court had occasion to consider the meaning of the word "*compensation*" in connection with certain questions aris-

ing out of the condemnation of a permanent right of way for the public over certain lands in the District of Columbia. In support of its opinion this Court cited with approval some decisions of the state courts. The following quotation from an Ohio opinion appears at page 581:

> "• • • The word *compensation* imports that a wrong or injury has been inflicted, and which must be redressed in money. Money must be paid to the extent of the injury, • • •"

In the case of *Holley* v. *City of Mount Vernon*, 141 N. Y. App. Div. 823 (1910), the Appellate Division for the Second Department, in defining the meaning of "compensation," said, at page 824:

> "• • • 'Compensation' is defined as 'A recompense or reward for some loss, injury, or service, especially when it is given by statute.' (6 Am. & Eng. Ency. of Law [2d. Ed.], 369.) • • •"

Stinson's Law Dictionary defines *compensation* as "A consideration; recompense," and *recompense* means:

> "A reward for services; remuneration for goods or other property."
>
> Bouvier's Law Dictionary, Rawle's Third Revision, Volume 3, Page 2843.

In Webster's New International Dictionary, 1927 Edition, the intransitive meaning of the verb "to compensate" is given as "to make compensation; specifically, to make amends; to supply an equivalent." And "compensation" is defined as

> "that which constitutes, or is regarded as, an equivalent or recompense; • • • that which compensates

for loss or privation; amends, remuneration; recompense."

In Volume 2 of Words and Phrases, First Series, the following definition of compensation appears at page 1352 among many similar legal definitions from decisions there quoted:

> "The primary significance of the word 'compensation' is equivalence, and the second or more common meaning is something given or obtained as an equivalent."

In Volume 1 of the Second Series of Words and Phrases the following definition appears at page 826:

> "'Compensation' means that which compensates for loss or privilege; a recompense for some loss."

In the same volume, at page 828, under the sub-title, "As remuneration for injury," these definitions of compensation are given:

> "'*Compensation*' is the bottom principle of the law of damages, and consists in the restoration of the party injured, as near as may be, to his former position by allowing a money equivalent of his property which has been taken, injured or destroyed. • • • "
>
> "The term '*compensation*,' when applied to damages, has a fixed legal signification much more restricted than its general or common acceptation. • • • "

These definitions state the foundation of the elemental and underlying principles of the law of damages.

Thus Mr. Clark, in his New York Law of Damages, commences his work as follows (Volume 1, Chapter 1, Section 1, Page 1) (italics ours):

> "§1. In General.—The relief afforded at law, except in special forms of action, either *for the breach of a contract* or a tortious invasion of a right, is by way of damages or pecuniary *compensation*, and the law of damages relates primarily to the amount and elements of the *compensation* to be awarded. • • •"

In the second Edition, 1919, of Mr. Arnold's well-known work on the English Law of Damages and Compensation, "*compensation*" is thus defined, at page 8 (italics ours):

> "The term compensation is ordinarily used in relation to a lawful act which has caused loss or injury, *in respect of which an indemnity—more or less adequate—may be obtained in accordance with a particular statute.*"

In the Ninth Edition of Sedgwick's Treatise on the Measure of Damages, the general principles adopted in the common law system as to damages are thus stated, at Page 24 of Volume 1:

> "§29. Damages consist in compensation for loss sustained. • • • By the general system of our law, for every invasion of right there is a remedy, and that remedy is *compensation*. [Italics Sedgwick's.] This compensation is furnished in the damages which are awarded."

In enacting the statute, Congress, as recognized even by the Courts below, had the intention of making provision for seamen discharged at the commencement of a voyage, and if Congress intended to provide for a definite and fixed rule

of damages it could not have used a more appropriate word than "*compensation.*"

If it had been intended by this statute merely to provide a penalty or temporary bonus to be paid to the seaman at the time of his discharge, reserving to him in addition the right to claim additional damages for breach of contract, Congress would certainly not have used so strong or clearly defined a word as "*compensation*" and would have placed in the statute in clear words a reservation of the seaman's rights in that respect.

Congress, in providing that under the circumstances named the seaman should be allowed "in addition to any wages he may have earned a sum equal in amount to one month's wages *as compensation*," clearly negatived the idea that the remedy should be in addition to any other compensation, whether for damages for breach of contract or otherwise.

It is submitted that Congress has provided in this statute a clearly defined constitutional remedy for its wards, the seamen.

It fixed a measure of damages which would be certain and easily proved.

This is not without its analogies in other provisions of our legislation regarding seamen.

By Section 4526 of the Revised Statutes of the United States Congress has provided that in case of the loss or wreck of a vessel the seaman is entitled only to his wages for the services rendered prior to the loss or wreck of the vessel and he is entitled to no further wages regardless of what the terms of his contract might have been.

In Section 4582 of the United States Revised Statutes it is provided that if a vessel is sold abroad the seaman is entitled to the wages due him and is to be provided with passage home or its equivalent.

The constitutionality of this statute has never been questioned.

On the contrary, in *Robertson* vs. *Baldwin*, 165 U. S., 275, this Court held that Sections 4598 and 4599 of the Revised Statutes of the United States, requiring seamen to carry out their contracts in accordance with the shipping articles, and making them liable to arrest for failure so to do, were constitutional and those sections are also a part of the same Act of June 7, 1872, 17 Stat., 262, which contains R. S. 4527.

This Court said at page 287:

> "• • • In this act and the amendments thereto very careful provisions are made for the protection of seamen against the frauds and cruelty of masters, the devices of boarding house keepers, and, as far as possible, against the consequences of their own ignorance and improvidence. At the same time discipline is more stringently enforced by additional punishments for desertion, absence without leave, disobedience, insubordination and barratry. Indeed, seamen are treated by Congress, as well as by the Parliament of Great Britain, as deficient in that full and intelligent responsibility for their acts which is accredited to ordinary adults, and as needing the protection of the law in the same sense which minors and wards are entitled to the protection of their parents and guardians: • • • The ancient characterization of seamen as 'wards of admiralty' is even more accurate now than it was formerly."

It is submitted that Congress having acted within its constitutional authority, and having in clear terms provided the remedy to which its particular wards, the seamen, are entitled in certain cases, the Court of Appeals erred in failing and refusing to carry out the will of Congress by enforcing the act as it reads. In so doing that court acted in conflict with the established decisions of this Court.

In *Caminetti* vs. *United States*, 242 U. S., 470, it was said, at page 485:

> "It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the law-making body which passed it, the sole function of the courts is to enforce it according to its terms." • • •
>
> "Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion. • • •"

And, again, at page 490:

> "• • • In other words, the language being plain, and not leading to absurd or wholly impractical consequences, it is the sole evidence of the ultimate legislative intent. • • •"

In *Dewey* vs. *United States*, 178 U. S., 510, this Court said, at page 521 (italics ours):

> "• • • This court has nothing to do with questions of mere policy that may be supposed to underlie the action of Congress. What is termed the policy of the Government in reference to any particular sub-

ject of legislation, this Court has said, 'is generally a very uncertain thing, upon which all sorts of opinions, each variant from the other, may be formed by different persons. It is a ground much too unstable upon which to rest the judgment of the Court in the interpretation of statutes.' *Hadden* v. *The Collector*, 5 Wall., 107, 111. Our province is to declare what the law is, and not, under the guise of interpretation or under the influence of what may be surmised to be the policy of the Government, so to depart from sound rules of construction as in effect to adjudge that to be law which Congress has not enacted as such. Here, the language used by Congress is unambiguous. It is so clear that the mind at once recognizes the intent of Congress. *Interpreted according to the natural import of the words used, the statute involves no absurdity or contradiction, and there is consequently no room for construction. Our duty is to give effect to the will of Congress, as thus plainly expressed.* • • •'

THIRD POINT.

THE COURT BELOW ERRED IN DISREGARDING THE JUDICIAL HISTORY OF R. S. §4527 AND COGNATE SECTIONS OF THE ACT OF JUNE 7, 1872, WHICH INDICATE THAT THERE SHOULD HAVE BEEN A DECISION SUPPORTING THE PETITIONER'S—SHIPOWNER'S—CONTENTION IN THIS CASE.

The meaning and scope of Section 4527 of the Revised Statutes has never been interpreted by this Court.

The only occasion on which it has been even mentioned, so far as counsel for the petitioners have been able to ascertain, is in the opinion of Mr. Justice Brown in *Tucker* v.

Alexandroff, 183 U. S. 424, at page 444, where it seems to be assumed that the section provides a fixed compensation for seamen wrongfully discharged before the commencement of the voyage or before one month's wages are earned.

There have, however, been a number of decisions in the lower Federal Courts and in some of the State Courts which all tend to support the contention made by the petitioners here that *§4527 gives the seamen an exclusive remedy for a fixed measure of damages*, and when that amount has been paid the seaman has been compensated for his wrongful discharge, and his cause of action therefor has been extinguished.

The Supreme Judicial Court of Massachusetts, in a unanimous decision, in which Mr. Justice Holmes, at that time Chief Justice of that Court, concurred, construed this statute in the manner for which the petitioners contend, and not as interpreted by the Circuit Court of Appeals.

In *Calvin* vs. *Huntley*, 178 Mass. 29, a seaman brought suit under R. S. 4527, for wrongful discharge, claiming the compensation therein fixed. The jurisdiction of the Court was challenged on the ground that the Federal Courts had exclusive jurisdiction under Section 711 of the Revised Statutes of the United States because the suit was for a penalty or forfeiture under the laws of the United States. The Court held that the statute was not penal, but remedial, and said (pp. 31, 32) (italics ours):

> "In each of these actions the plaintiff, a seaman, seeks to recover against the master of the vessel the wages earned by him up to the time of his discharge, and in addition thereto a sum equal to one month's wages, as provided in Rev. Stat. U. S., Sec. 4527
> • • •

"But it is urged that this is an action to recover a forfeiture or penalty, within the meaning of Rev. Stat. U. S., Sec. 711, cl. 2, which provides that the Federal courts shall have exclusive jurisdiction 'of all suits for penalties and forfeitures incurred under the laws of the United States.' Section 4527, which applies to this action, is as follows: * * * It is to be observed that the language of the section is not that ordinarily used in a penal statute. Neither the word 'penalty' nor 'forfeiture' is in it. Moreover, it does not provide punishment for the commission of a criminal offense, nor for the neglect of a statutory duty, nor even for the neglect of a duty in the performance of which the public, as such, may be supposed to have an interest. It speaks not of punishment, but of compensation. Its object is to protect the seaman from loss, rather than to punish the master for discharging him. The remedy is given to the seaman alone, and *its plain purpose is to furnish a clear and well-defined rule of damages, as between him and the master, for a breach of contract in which the seaman and the master or owner are the only persons interested.*

"The statute, being the law of the jurisdiction where the contract was made, is the law with reference to which the parties must be presumed to have contracted, or, in other words, it is the law of the contract, and it is as much a part of the contract as though inserted therein.

"Nor does the rule of damage seem unreasonable. The shipping contract calls upon the seaman to go to various places, sometimes far from home, and it may be, for instance, as in this case was the actual fact, that he may be discharged in a port distant from that where he signed the articles, or where he cannot immediately secure any other employment on board ship or elsewhere, and that in all

> fairness he should recover more than the amount due him for wages earned. *Hence it might be deemed advisable to have this indefinite element made definite by a general law with reference to which the parties may conclusively be presumed to have contracted, and which, therefore, should be taken to be the law of the contract.* The object of the statute is not to punish, but to provide a reasonable rule of compensation in a breach of contract. We think the statute not penal, but remedial. It follows that the State court had jurisdiction." *(*

In *Cox* v. *Lykes Bros.* (1924), 237 N. Y. 376, an action was brought by a seaman under R. S. §4529 for double wages, because of failure to pay wages due. The Court of Appeals had to consider the jurisdiction of the state courts, which turned upon the question whether the extra wages were recoverable as a penalty or as contractual compensation.

The Court held that it was a matter of contractual compensation, following and approving the rule in *Calvin* v. *Huntley*, 178 Mass. 29, and Judge Cardozo, who delivered the opinion of an unanimous court, said, at pages 379-380 (*italics ours*):

> "• • • The Appellate Division found the present suit to be one for a penalty or forfeiture within the meaning of this statute. We do not so regard it. Congress has expressly said that the extra compensation, when due, 'shall be recoverable as wages.' This would seem decisive, without more, that in determining the bounds of jurisdiction, it is not to be classified as a penalty. There was no thought that the state courts, which have undoubted jurisdiction to give judgment for wages in the strict sense, should be shorn of jurisdiction to give judgment for

the statutory incidents. This conclusion is fortified when we search for the purpose of the statute. *The purpose, or at least the predominant one, was, not punishment of the master or owner, but compensation to the seaman.* Delay means loss of opportunity to ship upon another vessel. It means hardship during the term of waiting, the sufferer often improvident, and stranded far from home. 'In all fairness he should recover more than the amount due him for wages earned' (*Calvin* v. *Huntley*, 178 Mass. 29, 32). *How much this extra amount should be would be often a troublesome question if it were left open in every case. 'Hence it might be deemed advisable to have this indefinite element made definite by a general law with reference to which the parties may conclusively be presumed to have contracted, and which, therefore, should be taken to be the law of the contract'* (*Calvin* v. *Huntley, supra; Gerber* v. *Spencer*, 278 Fed. Rep. 887; *Covert* v. *British Brig Wexford*, 3 Fed. Rep. 577, 578, 579). The case cited from Massachusetts is authority for the ruling that an action for extra wages under section 4527 of the United States Revised Statutes, which does not differ in essentials from section 4529, may be maintained in the state courts, and is not an action for a penalty. In harmony with this ruling are decisions of the Supreme Court of the United States, excluding from the class of penalties an action against the infringer of the copyright of a dramatic composition, who must pay not less than $100 for the first and $50 for every subsequent performance (*Brady* v. *Daly*, 175 U. S. 148) and an action under the anti-trust law for the recovery of treble damages (*Chattanooga Foundry & Pipe Works* v. *City of Atlanta*, 203 U. S. 390, Affg. 127 Fed. Rep. 23). * * * "

While the interpretation and construction of this statute has never, before the present case, been necessary for decision by a United States Circuit Court of Appeals, it is believed that in every case where the act has been mentioned, considered or applied by the United States Courts, it has always been regarded as the exclusive remedy of seamen wrongfully discharged within the terms of the statute.

In such cases no other or further claim for damages for such a discharge has been made by counsel or allowed by the Courts.

The Meton, 287 Fed., 531 (C. C. A., 4th Cir.);

Brown vs. *The United States*, 283 Fed., 425 (D. C., N. D. Cal.);

Hughes vs. *Southern Pacific Company*, 274 Fed., 876 (Ward, Circuit Judge, 2d Cir., sitting in D. C., S. D. N. Y.);

The Inland, 271 Fed., 1008 (D. C., E. D. N. Y., affirmed by C. C. A., 2d Cir., without opinion, 279 Fed., 1018);

Caffyn vs. *Peabody et al.*, 149 Fed., 294 (D. C., W. D. Washington);

The Geo. B. Ferguson, 140 Fed., 955 (D. C. Maine);

The Staghound and The Gamecock, 97 Fed., 973 (D. C., Oregon);

The Glencsslin, 96 Fed., 768 (D. C., Oregon);

The Alice Blanchard, 92 Fed., 519 (D. C., N. D. Cal);

The St. Paul, 77 Fed., 998 (Judge Addison Brown, D. C., S. D. N. Y.).

In *Caffyn* vs. *Peabody et al.*, 149 Fed., 294, a suit was brought by a chief engineer for wrongful discharge from a steamer on the Yukon River under a contract of employment at $250 a month and return expenses. Libellant sued for his full wages and the expenses of his return from the Yukon. The Court held the discharge was illegal, and, as more than one month's wages were earned, R. S. 4527 did not apply, but in awarding damages the Court said, at page 297:

> "and, having been discharged without his consent, and without fault on his part justifying such discharge, the court allows him as compensation one additional month's wages. I hold this award to be legal and just, by analogy to the measure of compensation prescribed by Section 4527, U. S. Rev. St."

In *The Glenesslin*, 96 Fed., 768, the seamen had not signed articles or performed services, and the Court held for that reason they had no lien on the vessel, saying, at page 768:

> "* * * Where services have not, in fact, been rendered, there can be no lien as for wages, except in the cases provided for in Section 4527 of the Revised Statutes, where a shipping agreement has been signed, and the seaman is thereafter unwarrantably discharged by the master. In such cases a sum equal to one month's wages may be recovered. * * *"

In *The Alice Blanchard*, 92 Fed., 519, the libellant had signed articles as cook for a number of voyages. On the day agreed he presented himself for work at noon, but the master contended he should have reported at 8 a. m., and put him ashore and sailed away. Libellant sued for wages

(amount not stated) for wrongful discharge. The Court held the discharge wrongful, and said (p. 521):

> "* * * The libellant was to receive $50 per month as wages, and under Section 4527 of the United States Revised Statutes he is entitled to recover in this action a sum equal to the amount agreed to be paid him as wages for one month, and costs of suit. So ordered."

This decision is directly in point and holds that the remedy provided by the statute is exclusive.

In *The St. Paul* (S. D. N. Y. 1897) 77 Fed. 998, seamen who had signed for a voyage from New York to Southampton and back were discharged without fault on their part. They sued for fifteen days' wages, the residue of the ordinary period of the voyage, under R. S. §4527.

Judge Addison Brown held that their discharge was justifiable from the ship's viewpoint, and that probably no wages or compensation other than for the time they had served could have been recovered by them, except for the provisions of §4527. In decreeing the wages claimed by the libellant he said, at p. 999:

> "* * * The wages for the voyage being in this case less than the statutory provision for a month's wages, the claim presented seems to me very clearly within the equity and the intent of the statute; and the same also as respects the right to proceed *in rem*. * * *"

In *The Charles D. Lane* (D. C. Wash. 1901) 106 Fed. 746, a vessel, soon after starting on her voyage, became seriously disabled and was compelled to return to the port

of departure for repairs, where the master discharged the crew and paid them their wages for the time served. The men protested that they were entitled to a month's extra pay under R. S. §4527, but without compulsion accepted the money tendered and signed a release before the shipping commissioner. Upon a suit for the extra wages the court held that they were bound by the release and had waived the benefit of the statute.

In *The John R. Bergen* (S. D. N. Y. 1903) 122 Fed. 98 the libellant was engaged at New York to serve on a ship then lying at Fairport, Va. While he was proceeding south by train the ship sailed, and he was intercepted by telegram and discharged. A day or so later the owners of the ship obtained new employment for him equivalent to the other, which he accepted. He never receipted for his wages nor signed clear of the first ship, and later sued for a month's extra wages under R. S. §4527. The Court held that he had relinquished his right to this by accepting the new equivalent employment.

In cases where a seaman, after having been informed that he is discharged, is told within a short interval to resume his duties and to return to the ship, his refusal to do so bars his right to recover extra wages under R. S. §4527.

Dary v. *The Caroline Miller* (D. C. Ala., 1888), 36 Fed. 507;

The Island (E. D., N. Y., 1921), 271 Fed. 1008, aff'd without opinion, 279 Fed. 1018;

The Meton (C. C. A. 4, 1923), 287 Fed. 531;

Cf. Hughes v. *Southern Pacific Co.* (S. D., N. Y., 1918), 274 Fed. 876 (Ward, Circuit Judge for the Second Circuit, sitting in the District Court).

In *Manhattan Canning Co.* v. *Wilson* (C. C. A. 9, 1914), 217 Fed. 41, a seaman, named Wilson, was injured at the outset of a voyage and was taken to a hospital. Some point was made at the trial that Wilson had been discharged for drunkenness before the voyage began. In passing on this the Circuit Court of Appeals said, at page 43:

> "We do not say that an actual formal discharge would be necessary in order to entitle an owner to discharge his obligation to a seaman by paying him a month's wages, as provided for in section 4527. The conduct of the master or owner, or the existing circumstances, might be such as in law to discharge a seaman from his contract. But that is not the present case * * *."

In *The Great Canton* (E. D., N. Y., 1924), 299 Fed. 953, a vessel had been taken into custody by a United States Marshal on a monition and was subsequently sold. Certain of the seamen sued for one month's extra wages under R. S. §4527 and also for double wages under §4529, on the ground that the seizure had effected a "discharge", and they asked that they should be held to have a lien.

Despite the fact that nothing in the statutes gives a lien Judge Garvin followed Judge Addison Brown in *The St. Paul*, 77 Fed. 998, and held that the seamen had a lien. Though Judge Garvin did not say so, his holding implies that the rights created by the statutes must have been contractual in order to give rise to the lien.

To the same effect is *The Nika* (D. C., Wash., 1922), 287 Fed. 717, in which a maritime lien was given for extra wages under the very similar §4529. The court here followed *Gerber* v. *Spencer*, 278 Fed. 886, and quoted from it. It held the extra wages to be *compensation* for delay and therefore a maritime lien was given.

In *The Fort Gaines* (D. C. Md. 1927), 18 Fed. (2d) 413, 1927 A. M. C. 655, Norwegian seamen sued for extra pay under a Norwegian law similar to R. S. §4529, and the question was whether the seizure of the ship by a United States Marshal amounted to an unwarranted dismissal under Norwegian law. As no interpretation of that law was furnished to the Court, the Court gave that law such an interpretation as would be given to similar laws of the United States, and proceeded to interpret R. S. §§4527 and 4529.

The Court held that there had been a wrongful dismissal and that, by analogy to §§4527 and 4529, such extra pay was given by way of compensation, so that a maritime lien was created as against the ship.

The decisions under R. S. §4529* have been of similar import.

In *The Chas. L. Baylis* (S. D. N. Y. 1885) 25 Fed. 862 a claim for wages was allowed under §4529. Judge Addison Brown said, at p. 863:

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* This section of the Revised Statutes, which was §35 of the Act of June 7, 1872, is given in full in Appendix I hereof.

"• • • But the extra pay provided by statute [R. S. §4529] is an incident to their claim of wages proper, and ranks with their wages as a prior lien. • • • "

In *The Amazon* (D. C. Wash. 1906), 144 Fed. 153, the interpretation of §4529 was before the Court, which said, at p. 155 (italics ours):

"Under this statute, seamen are entitled to have their wages continue at the contract rate until paid, the wages for the interval of time between cessation of work and payment *being intended as liquidated damages* for the withholding, without sufficient cause, of what is due, and when wages have been honestly earned and become due, and there is no reasonable ground for controversy with respect to the right of the seamen to receive payment, it is eminently just that they should be compensated for vexatious delay by an award of additional wages as liquidated damages. *The Wexford* (D. C.), 3 Fed. 577. • • • "

In *The City of Montgomery* (S. D. N. Y. 1913) 210 Fed. 673, Judge Mayer said, at pages 675-676:

"If, therefore, the seaman had carried out his agreement so far as duration of service was concerned, the next question is whether the provision postponing the payment of wages is lawful. • • •

"It is claimed that the provisions of this statute [§4529] may be waived, and in support of this view claimant cites *The Lillian* (D. C.) 131 Fed. 375, and *The Joseph B. Thomas* (D. C.) 136 Fed. 693, and Id. (C. C. A.) 148 Fed. 762. I think these cases are distinguishable from that at bar, but, in any event, I am of opinion that the master and seaman cannot, by contract, abrogate the provisions of section 4529.

Without enlarging on the history of legislation of this character, it may be said that Congress has long regarded seamen in the nature of wards whose rights must be safeguarded. The requirement to pay them promptly is not to be overridden. • • •

"It is true that the statute does not in terms declare void an agreement in contravention thereof, but, in speaking of the termination of 'the agreement', it is clear that Congress had in mind that, no matter what 'the agreement' was, the seaman's wages must be paid within two days after the man had duly performed the service required by 'the agreement'. Holding this view, I am of opinion that the statute is controlling, and that the provision in the articles here discussed was void and of no effect."

In *Gerber* v. *Spencer* (C. C. A. 9, 1922), 278 Fed. 886, the Court held that extra pay under R. S. §4529, was "extra pay by way of compensation for delay. The extra pay is an incident to the claim of wages proper." To sustain this position the Court then quoted with approval the statement of Judge Choate in *Covert* v. *British Brig Wexford*, 3 Fed. 577.

In *Buckley* v. *Oceanic S. S. Co.* (C. C. A. 9, 1925), 5 Fed. (2d) 545, an action was commenced on July 16, 1923, by a seaman for wages and double wages under R. S. §4529. The cause of action accrued on June 27, 1921, and the California statute of limitations barred actions on contracts not in writing in two years. It was held that the action was for wages and not for a penalty, and judgment was given for the defendant. The Court said, at page 546:

"• • • The nature of that statute (section 4529), whether it is remedial or penal, has been con-

sidered by this and other courts, which have held that sums recoverable under its provisions are treated as wages—compensation to seamen, rather than punishment of the master. *Gerber* v. *Spencer* (C. C. A.), 278 F. 886; *Cox* v. *Lykes Brothers*, 237 N. Y. 376, 143 N. E. 226."

In *The Trader* (D. C., So. Car. 1926), 17 Fed. (2d) 623, Judge Cochran said, at page 625, in construing R. S. §4529:

"• • • • In a certain sense, the double wages are penalties, but not in the legal signification of the term. The obvious intent of Congress was to protect the seamen and assure them a prompt settlement, in view of the nature of their employment and the likelihood of their being discharged far from home, and, in the event of a failure to pay, to secure them an adequate compensation for such failure. It is to be observed that the statute expressly says that these so-called penalties shall be *'recoverable as wages'*. They are an incident to and a part of the actual wages, just as much as interest is an incident to and a part of a debt. They are intended as compensation for the delay in the payment, and, inasmuch as they are an incident to and a part of the wages, they will constitute a maritime lien on the vessel, the same as wages."

The established principle of general maritime law, which was embodied in our law by §4527 for the control of the relations between vessels of the United States and seamen therein has been applied by our courts to foreign ships.

In *Covert* v. *British Brig Wexford* (S. D. N. Y., 1880), 3 Fed. 577, a libel was brought by British seamen for wages

due and for extra wages under Sec. 187 of the Merchant Shipping Act (17 & 18 Viet., *c.* 104).

Judge Choate said, at pages 578-579 (italics ours):

> "I think the extra pay due to the seamen is to be treated as wages, for which they have a prior lien on the vessel. The statute provides that it shall be recovered as wages. This clearly means by the same methods or modes of procedure. The customary mode of recovering wages is by libelling the ship. The language, therefore, necessarily implied that the ship is holden for this extra pay. And, aside from this particular language of the statute, I think that, from the nature of the provision, and the purposes it was intended to subserve, the extra pay may be properly regarded as an addition or increase of wages in the event of the neglect of the master or owner to provide for their prompt payment. We have a similar provision in our own act. These statutes are designed for the protection of seamen; to prevent the abuse of withholding their pay, and thereby keeping them in port at expense and out of employment while waiting for a settlement. *It is a liquidated indemnity for such enforced expense and delay.* It is limited to ten days, perhaps upon the theory that the summary powers of the admiralty courts, everywhere exercised for the protection of seamen, can, within that time, be brought to bear for their relief, and to encourage diligence on their part in presenting and prosecuting their claims. These protective statutes would be of little or no value to the seamen if they do not give them a lien on the vessel. A mere right to enforce a personal claim for such small sums against the master or owner would generally be of no value to them. And, if they have a lien, it must, I think, be presumed that it was intended to be a lien in all respects like

> that for their stipulated wages—one equally beneficial to them. *The contract with the seamen is to be deemed made with reference to the existing law governing the ship*, which, in this case, is the British law, and the right to the extra pay must be deemed secured to them by the contract itself. *The wages must be deemed by the contract to be agreed upon as this much more in case of delay in payment.* There must therefore be a decree for the seamen for their wages and extra pay, with costs, payable at once, in preference to all other claims."

In *The Adolph* (S. D. N. Y., 1881), 7 Fed. 501, a Swedish bark had been in a collision, for which it was libelled, and it was also libelled by the insurer of the cargo. Thereafter the owner abandoned the voyage and the seamen libelled her for wages and for three months' extra wages under the Swedish law. In awarding the entire wages claimed, Judge Choate said, at pp. 503-504:

> "• • • I see no reason why the seamen should not have the extra wages which the law of their country gives them. A similar point was ruled in favor of the seamen in the case of *The Wexford*, 3 Fed. Rep. 577. This allowance is a liquidated and certain substitute for the claim which, independently of positive law, the seamen are entitled to when the voyage is broken up in a foreign port. • • •"

In *The Fort Gaines* (D. C., Md., 1927), 18 Fed. (2d) 413, it was found that under the maritime law of Norway a mate or engineer is entitled to two months' wages for wrongful dismissal and all other members of the crew to one month's wages.

The Court, in a suit for extra pay under this law, homologized the Norwegian Act to the American statute,

gave the crew a lien for the extra pay, and inferentially held the extra pay to be compensation under the contract.

It is submitted that in addition to the cases already cited, R. S. §4527 has been before the Courts only in the following cases, in no one of which has the statute been construed or interpreted according to the decision of the Circuit Court of Appeals herein, *viz.*:

The Donna Lane, 299 Fed., 977 (D. C., W. D. Washington);

The Quaker City, 290 Fed., 409 (D. C., Maryland);

The August Belmont, 153 Fed., 639 (D. C., S. D. Ga.);

The Joseph B. Thomas, 136 Fed., 693 (D. C., E. D. Pa.);

The Villa y Herman, 101 Fed., 132 (D. C., S. D. Ala.);

The Schooner Jefferson Borden, 6 Fed., 301 (D. C., Delaware).

The Circuit Court of Appeals for the Fifth Circuit, therefore, has decided herein an important question of Federal law, construing an important Federal statute, and has rendered a decision in conflict with the weight of authority as established by the decisions of the United States Courts and of such State Courts as have had the question before them.

The Judicial history of R. S. §4527, which we believe we have given fully and fairly above, completely supports, it is submitted, the contention of the petitioners herein that the libel should have been dismissed.

LAST POINT.

THE DECISION OF THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT SHOULD BE REVERSED AND THE CASE SHOULD BE REMANDED WITH INSTRUCTIONS TO THE DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA TO DISMISS THE LIBEL.

November, 1927.

Respectfully submitted,

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Appendices I, II and III.

APPENDIX I.

Certain Sections of the Revised Statutes.

§4526 was §33 of the Act of June 7, 1872, as amended.
§4529 was §35 of the Act of June 7, 1872, as amended.
§4582 comes from the Act of Feb. 28, 1803, as amended.

§4526.

In cases where the service of any seaman terminates before the period contemplated in the agreement, by reason of the loss or wreck of the vessel, such seaman shall be entitled to wages for the time of service prior to such termination, but not for any further period. Such seaman shall be considered as a destitute seaman and shall be treated and transported to port of shipment as provided in sections forty-five hundred and seventy-seven, forty-five hundred and seventy-eight, and forty-five hundred and seventy-nine of the Revised Statutes of the United States. (R. S., Sec. 4526, amended, Dec. 21, 1898, c. 28, Sec. 3, 30 Stat. 755.)

§4529.

The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific or vice versa, within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in the

manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the Court; but this section shall not apply to masters or owners of any vessel the seamen of which are entitled to share in the profits of the cruise or voyage. (R. S., Sec. 4529, amended, Dec. 21, 1898, c. 28, Sec. 4, 30 Stat. 756, and March 4, 1915, c. 153, Sec. 3, 38 Stat. 1164.)

§4582.

Whenever a vessel of the United States is sold in a foreign country and her company discharged, it shall be the duty of the master to produce to the consular officer a certified list of the ship's company, and also the shipping articles, and besides paying to each seaman or apprentice the wages due him, he shall either provide him with adequate employment on board some other vessel bound to the port at which he was originally shipped, or to such other port as may be agreed upon by him, or furnish the means of sending him to such port, or provide him with a passage home, or deposit with the consular officer such a sum of money as is by the officer deemed sufficient to defray the expenses of his maintenance and passage home; and the consular officer shall indorse upon the agreement with the crew of the ship which the seaman or apprentice is leaving the particulars of any payment, provision, or deposit made under this section. A failure to comply with the provisions of this section shall render the owner liable to a fine of not exceeding fifty dollars. (R. S. Sec. 4582, amended, June 26, 1884, c. 121, Secs. 5, 23, Stat. 54, and Dec. 21, 1898, c. 28, Secs. 17, 30, Stat. 759.)

APPENDIX II.

THE CONGRESSIONAL HISTORY OF R. S. §4527, AND EFFECT THEREOF UNDER THE DECISIONS OF THIS COURT ON THE CONSTRUCTION OF STATUTES.

R. S. Section 4527 originally was a part of a considerable system of shipping laws which was introduced in the House of Representatives early in 1872 as H. R. No. 2044.

Of the original bill the section under discussion was the twenty-first, and, as originally introduced, it read as follows:

> "SEC. 21. That any seaman who has signed an agreement and is afterwards discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing such evidence as the court hearing the case deems satisfactory of having been so improperly discharged as aforesaid, recover such compensation as if it were wages duly earned."

This section was not changed in any way during the passage of the Act and appears without alteration at page 266 of Volume 17 of the Statutes at Large.

The first reference which counsel have been able to find to H. R. 2044 is at page 1836* of the Congressional Globe. On March 20th, 1872, the bill was reported back to the

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* The page citations made herein are all to the Congressional Globe for the Second Session of the Forty-Second Congress.

House of Representatives by the Committee on Commerce with the recommendation that it pass. Mr. Conger of Michigan sponsored the bill. The House then considered the bill, and at page 1836 the following debate took place:

> "Mr. Potter. Before the proposition of the gentleman from Michigan (Mr. Conger) is acted on, I wish to make an inquiry. Will the gentleman from Michigan be kind enough to inform me whether this bill is in any respect or substantially like the bill on this subject which was considered by the Committee on Commerce during the Forty-First Congress?"
>
> "Mr. Conger. It is the same bill, with some merely verbal changes. * * *
>
> "This bill, in substantially its present form, was passed by the Senate during the last Congress and received the attention of the Committee on Commerce of this House, but it failed to be reported here for lack of time. It is substantially the same bill as that to which the gentleman from New York refers, there being only some verbal changes.
>
> "* * * The object of the bill, as indicated in its title, is to protect seamen by legal regulations as to the mode of their shipping and discharge, in lack of any laws now existing on the subject. The bill is substantially the Shipping-Commissioners Act of England, with such changes as have been deemed necessary to adapt it to this country. * * *"

Nothing which was of any interest in the present question was said during the rest of the debate.

On April 4th, 1872, the House of Representatives resumed the consideration of the bill, which was read section by section. Many of the sections were debated, but Sec-

tion 21 was not touched on in the debate. Pp. 2172 and following.

On April 5th, the House of Representatives resumed and completed the consideration of the bill. The bill was read a third time and passed. Pp. 2206-2208.

On April 9th, 1872, H. R. No. 2044 was received by the Senate from the House of Representatives, page 2286, and on the same day it was read twice by title and referred to the Committee on Commerce, page 2297.

On April 24th, 1872, the following brief note as to the Senate proceedings appears at page 2716:

> "Mr. BUCKINGHAM, from the Committee on Commerce, to whom was referred the bill (H. R. No. 2044) to authorize the appointment of shipping commissioners by the several circuit courts of the United States to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen, reported it with amendments."

On May 14th, the Senate considered the bill as Committee of the Whole and in the course of the debate Senator Stockton, who was asking the supporters of the bill for information but who was neither opposing it nor supporting it, said, at page 3437:

> "It is fifty pages of a code of laws to govern the merchant marine. It is an alteration of the rules of the Courts of Admiralty. It is an alteration of the contracts between seamen and their employers. * * *"

Three days later, on May 17th, 1872, the bill, with the Senate Committee's amendments, passed the Senate without further debate, as appears at page 3572:

"MR. CHANDLER. Does the Senate object to the vote being taken on House bill No. 2044, to authorize the appointment of shipping commissioners by the several circuit courts of the United States, to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen?"

"THE VICE PRESIDENT. If there is no objection the bill will be read the third time, and the question is on its passage."

"The bill was passed."

On May 18th, 1872, the bill with the Senate amendments was reported back to the House of Representatives, ordered printed and to lie on the table: p. 3634.

On May 23rd the House of Representatives insisted on its original measure and asked for a conference with the Senate: p. 3798.

On May 24th the Senate insisted on its amendments and asked for a conference with the House of Representatives: pp. 3807, 3825.

On May 27th the conference committees reported to the House of Representatives, p. 3886, and to the Senate, p. 3911, and the conference report was concurred in by the Senate, p. 3911, and by the House of Representatives, p. 3919.

The bill was enrolled and signed on May 29th, in the House of Representatives, p. 3983, and in the Senate, p. 4010.

On June 8th, 1872, a message was received from one of President Grant's secretaries stating that the president had signed the bill, p. 4425.

As we have pointed out, no alteration was made in Section 21, the present R. S. §4527, by either the Senate or the House of Representatives.

While ordinarily the opinions of individual members of either House of Congress are not admissible to determine the meaning of any particular provision of a statute;

> *Mitchell* v. *Great Works etc. Co.* (C. C. Maine 1843), *per* Story, J., 2 Story 648, 17 Fed. Cas. 496, 498-9; #9662;
>
> *Aldridge* v. *Williams* (1844), 3 How. 1, 24;
>
> *U. S.* v. *Union Pac. R. R. Co.* (1875), 91 U. S. 72, 79,
>
> *U. S.* v. *Trans-Missouri Freight Assn.* (1897), 166 U. S. 290, 318;
>
> *Duplex Co.* v. *Deering* (1921), 254 U. S. 443, 474;
>
> But *contra; U. S.* v. *Thind* (1923), 261 U. S. 204, 214,

an exception exists to this rule. The remarks of members in charge of the bill on the floor, or who participated in the preparation of the bill, may be used in construing its provisions:

> *Acklin* v. *People's etc. Assn.* (D. C. Ohio 1923), 293 Fed. 392, 397;
>
> *Mennen Co.* v. *Fed'l Trade Com'n* (C. C. A. 2 1923), 288 Fed. 774, 778; cert. denied 262 U. S. 759;
>
> *U. S.* v. *Coca Cola Co.* (1916), 241 U. S. 265, 281;
>
> *U. S.* v. *St. Paul etc. Co.* (1918), 247 U. S. 310, 318;
>
> *Duplex Co.* v. *Deering* (1921), 254 U. S. 443, 475.

It is apparent from the remarks of Mr. Conger of Michigan, the sponsor of the bill, made on March 20, 1872, which have been quoted above, that it was intended to alter and regulate the mode of the discharge of seamen.

As far as concerns Section 21, nowhere in the debates or in the proceedings of either House was anything said or done to contradict this statement of general intention.

The intention of Congress is plain and the language used by Congress to express its intention is apt and clear. As has been pointed out above, no alteration was made in Section 21, the present R. S. §4527, by either the Senate or the House of Representatives from the time of its introduction to the time of its passage.

We respectfully urge that under these circumstances the clearly expressed intention of Congress is binding on this Court.

APPENDIX III.

Provisions of the European Codes.

Provisions similar to those of R. S. §4527 are to be found in the codes of the principal maritime nations of Europe.

We omit any consideration of the provisions of the European codes which deal with unlawful discharge before the voyage has commenced, in the class of cases where a lump sum payment has been agreed upon for an entire particular voyage, and discuss only the provisions of the codes which deal with unlawful discharge before the voyage has commenced where the pay of the seaman is by the month.

The Court will note that Congress, following the English statute, has gone beyond the provisions of the other European legislation by extending the period within which the extra compensation accrues to the seaman to one month after the employment has commenced, even though the voyage has commenced previous to the unlawful discharge.

France: Article 252 of the *French Code of Commerce* provides as follows (italics ours):

> "If the voyage is broken up by the act of the owners, captain, or affreighters, before the departure of the ship, the seamen hired by the voyage or by the month are paid for the days employed by them in the fitting out of the ship. They retain *as indemnities* the advances received.
>
> "If the advances have not then been paid, they receive, *as indemnity*, one month of their agreed wages."

The French text of this article is as follows:

> "Art. 252. Si le voyage est rompu par le fait des propriétaires, capitaine ou affréteurs, avant le départ du navire, les matelots loués au voyage ou au mois sont payés des journées par eux employées à l'équipment du navire. Ils retiennent pour indemnités les avances reçues.
>
> "Si les avances ne sont pas encore payées, ils reçoivent, pour indemnité, un mois de leurs gages convenus."

ITALY: Article 529 of the *Italian Code of Commerce* provides as follows (italics ours):

> "If the voyage is broken up by the act of the owners, of the captain, or of the affreighters before the departure of the ship, the seamen hired by the voyage or by the month have the right to payment for the days employed by them for the fitting out of the ship and retain *as indemnity* the advances received.
>
> "If the advances have not then been paid, the seamen hired by the month receive *as indemnity* one month of the agreed salary * * *."

The Italian text of this article is as follows:

> "529. Se il viaggio è rotto per fatto dei proprietarii, del capitano o dei noleggiatori prima della partenza della nave, i marinai arruolati a viaggio od a mese hanno diritto al pagamento delle giornate da essi impiegate ad allestire la nave e ritengono per indennità le anticipazioni ricevute.
>
> "Se le anticipazioni non sono ancora state pagate, i marinai arruolati a mese ricevono per indennità una mesata del salario convenuto * * *."

BELGIUM: Article 93 of Book II, Title II, of the *Belgian Code of Commerce* provides as follows (italics ours):

> "If the voyage is broken up by the act of the owners, captain or affreighters, before the departure of the ship, the seamen hired by the voyage or by the month are paid for the days employed by them in the fitting out of the ship. They retain *as indemnity* the advances received.
>
> "If the advances have not then been paid, the seamen hired by the month receive *as indemnity* one month of their agreed wages * * *."

The French text of this article is as follows:

> "93. Si le voyage est rompu par le fait des propriétaires, capitaine ou affréteurs, avant le départ du navire, les matelots loués au voyage ou au mois sont payés des journées par eux employées à l'équipment du navire. Ils retiennent pour indemnité les avances reçues.
>
> "Si les avances ne sont pas encore payées, les matelots loués au mois reçoivent pour indemnité un mois de leurs gages convenus; * * *."

THE NETHERLANDS: Article 411 of the *Code of Commerce of the Netherlands* provides as follows (italics ours):

> "If the voyage is broken up before the departure by the act of the owner, of the captain or of the affreighter, the officers and seamen shall have the choice, either to keep, *by way of indemnity*, all that of their wages which has been advanced to them, or to demand, deduction being made of these advances, one month of their agreed wages, or one-fourth of their wages, if they were hired by the voyage.
>
> "Whichever the way by which they were hired, they keep their rights to the salary for the days

employed by them in the service after signing the muster-roll, the salary being calculated in proportion to the agreed wages."

Article 411 of the *Code of the Dutch Indies* is identical with Article 411 above.

The Dutch text of these articles is as follows:

"411. Indien de reis, door toedoen van den eigenaar, den schipper of den bevrachter, in het geheel geenen voortgang heeft, hebben de officieren en de scheepsgezellen de keuze, of, om tot schadeloosstelling te behouden al hetgeen zij op hand ontvangen hebben, of, onder aftrek daarvan, te vordeeren één maand huur of, indien zij bij de reis zijn aangenomen, een vierde van het bedongen loon.

"Op hoedanige wijze zij ook mogten gehuurd zijn, blijven zij geregtigd tot de vordering van hun loon voor die dagen, gedurende welke zij sedert de monstering in den dienst zijn geweest, berekend in evenredigheid van de bedongene huur."

Norway: Section 34 of the *Norwegian Act of February 16, 1923*, provides as follows:

"If a seaman is dismissed before the termination of the engagement, without such dismissal being warranted according to Section 32 or Section 33, he shall be entitled to two months' wages from the date of leaving, provided he is a mate or engineer, or to one month's wages, provided he belongs to the remaining crew."

This section is set forth in the decision of the court at page 413 in *The Fort Gaines*, 18 Fed. (2d) 413; 1927 A. M. C. 655.

Thus it will be seen by this Court that each of the codes which we have cited above provide, like the British and the American statutes, that the extra payment shall

be an indemnity for the damages suffered by the seamen because of the breach of contract in discharging him.

It will also be noticed that the measure of damages of the various codes is, like R. S., Section 4527, set at one month's wages, except that the European seamen, England excepted, have the privilege of retaining any advances of wages received by them instead of the lump sum of one month's wages.

The English statute is more liberal than the other European codes, because it extends the time within which the extra compensation may be received from "before the departure of the ship" to "before the commencement of the voyage, or before one month's wages are earned."

On the other hand, the English statute provides a sliding scale of damages, so that the seaman is compelled to prove the measure of his damages, which, it is provided, in any case cannot exceed one month's wages.

R. S., Section 4527, combines the liberality of the English statute with that of the Continental codes, because it does not compel the seaman to prove the measure of his damages. He need only show his wrongful discharge within the time limit of the American statute, whereupon he recovers the lump sum of one month's wages, even though, perhaps, he may have secured an equally remunerative position elsewhere the day after his discharge.

Further, by providing that the one month's wages shall be recovered "as if it were wages duly earned", Congress has permitted the seaman to collect his damages in the special and summary method by which he recovers his ordinary wages.

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SUPREME COURT OF THE UNITED STATES

October Term, 1927.

No. 106

UNITED STATES STEEL PRODUCTS COMPANY, Claimant and Owner of the Steamship "STEEL TRADER," et al.,

Petitioners,

against

DONALD J. ADAMS,

Libelant Respondent.

BRIEF FOR LIBELANT RESPONDENT.

EUGENE S. HAYFORD,

Counsel for Libelant Respondent.

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DONALD J. ADAMS,

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BRIEF FOR LIBELANT RESPONDENT.

STATEMENT OF CASE.

This case comes here on a Writ of Certiorari to the Circuit Court of Appeal for the Fifth Circuit, granted November 1, 1926.

The writ seeks to review a decree of the United States Circuit Court of Appeals for the Fifth Circuit made

May 13, 1926, which affirmed a decree in favor of Adams in the United States District Court for the Eastern District of Louisiana, rendered December 31, 1925, by Judge Louis H. Burns, and signed January 31, 1926.

The only question involved in this case is the construction given to R. S. 4527. The facts of this case were undisputed, the case involving a question of law. The scale of wages as fixed by the articles is not questioned, the duration of the voyage is fixed and undisputed and that libelant is a seaman is unquestioned, therefore, we are only concerned with one question, and that is, whether or not Revised Statute 4527 is applicable to this case; we think not. Petitioners contend otherwise.

A review of the opinions rendered by Judge Burns of the U. S. District Court, we think, is convincing that he was extremely painstaking, giving careful thought to this case, and was thorough in his research, and both opinions were identical in thought and reasoning. The three judges of the United States Circuit Court of Appeals for the Fifth Circuit after hearing argument and a careful study of all the authorities submitted by Petitioners (Appellants there) made a decree confirming the decree of Judge Burns of the District Court.

Counsel for Petitioners in their brief have referred to various authorities on the question of interpretation of statutes, all of which authorities, so cited, have no refer-

ence whatsoever to the case at bar. The very words of the statute may be taken to describe Libelant Adams:

> "A seaman who has signed an agreement and is afterwards discharged before one month's wages are earned, without fault on his part justifying such discharge, and without his consent * * *."

The interpretation that counsel would place upon the statute would read out of existence, specific conditions upon which the application of the statute depends.

We think the first condition of the statute *contemplates a voyage before the commencement of which the seaman is wrongfully discharged.* And that the second condition is not predicated upon *an immediate voyage* as where in sailing vessels days, often ships would lay at anchor in harbor due to calms, adverse winds, storms, awaiting orders, docking, bending sails, setting up rigging or otherwise delayed (statute enacted 1872), it being a common occurrence in "that day" for a vessel to ship her crew many days in advance of actual departure on the contemplated voyage, and the seaman is wrongfully discharged before the month's wages are earned.

We think that Congress never intended that the statute would apply after the commencement of the voyage, as well as before the commencement of a voyage. If such had been the case the first clause of the statute reading:

> "Any seaman who has signed an agreement and is afterwards discharged before the commencement of the voyage,"

would have no doubt been omitted, or the statute would have specified that the extra compensation should be paid as damages for the breach upon a wrongful discharge "*before one month's wages are earned.*"

We believe that R. S. 4527 was enacted to give immediate relief and clear up the confusion that existed in maritime law in reference to the rights of seamen who had signed an agreement for a voyage and afterwards discharged before the commencement of a voyage, without fault on their part, and a careful reading of the act, particularly Section 21 of the original statute (Act June 7, 1872, 17 Statute 266) containing sixty-eight sections regulating the employment, discipline and discharge of seamen, we think is convincing.

Congress, in enacting the statute (R. S. 4527) with respect to wrongful discharge of seamen, no doubt intended the fixing of penal compensation for breach of the seamen's contract (Shipping Articles), and it is apparent that Congress in passing this act had in mind the confusion existing in the law regulating the discharge of seamen before the voyage began, as will be noted from a review of the decisions of the Admiralty Courts and the early text writers. As to the seaman's discharge after the commencement of the voyage, there can be no doubt as to his right to recover in an action either at common law or by a libel in admiralty for a breach of contract (Shipping Articles) as the circumstances of the case would justify.

The seaman did not require that Congress enact additional legislation *in his interest* as respect to his rights after the commencement of a voyage, and as the statute is silent as to any provision with respect to wrongful discharges happening after the commencement of the voyages, or after one month's pay had been earned; it must be apparent that Congress only intended that the statute apply to a claim for wages arriving before the commencement of the voyage and before one month's wages has been earned. It is significant that the act makes no provision for sustenance or return passage of the seaman to port of departure, therefore it must be presumed that the lawmakers intended the act only to apply to seamen at port of departure "before the commencement of the voyage."

If Congress had intended, or the Court should interpret the act to read as claimant and appellant would have your Honors interpret it, then in order for the seaman to escape its provisions, he must have signed an agreement and afterwards been discharged without fault on his part after the commencement of the voyage and after he had earned one month's wages, but if discharged within this period (thirty days) regardless of whether the voyage had begun or not, and regardless of what ports of call were made or the distance from the home port, the seaman may be so dismissed or the expense incurred by him for maintenance and return passage, then and in that event, he would come within its provisions.

To put such a construction on the statute would, we think, make it inoperative, in view of the conditions existing in connection with the employment of seamen on American ships operating out of American ports, for the reason that "to-day" ninety-nine ships out of a hundred (comparatively fast ships) begin the voyage before one month's wages can possibly be earned, and to hold that seamen can be dismissed under the statute (4527) after the commencement of the voyage any time within the thirty days, thereby ignoring the "commencement of the voyage clause," would be to ignore the intent of the statute; all the usages and customs of "Maritime Law," as well as the ruling decisions of all the Courts of Admiralty, which Courts have always distinguished the respective right of the seaman to compensation for the breach of his contract of employment before as well as after the voyage began. Counsels in their original brief (in the Circuit Court of Appeals, pgs. 15-16) recognize this distinction in the early maritime decisions cited, particularly *Marine Ordinances of France, Book III, Title IV, Article X, p. XXVII, Vol. 4, Peters Admiralty Decisions*:

> "If a Master dismiss a mariner without a sufficient cause before the voyage begun, he must pay him one-third of his wages; and if after the voyage is begun, he shall pay his whole wages, together with his charges for returning to place of his departure."

Article III of the same book of ordinances, provided (2 Peters, p. XXX):

"If by the *fault* of the owners, the master or merchants, a voyage be broken before departure of the ship, the seamen hired for the voyage shall be paid for the time taken up in rigging and equipping the ship, *and have one-fourth of their wages.* (Italics ours.)

Counsels also cited in their brief in the United States Circuit Court of Appeals, *Article XLI of the Laws of the Hause Towns, Vol. 1, Peters Admiralty Decisions, p. CV*:

"If a mariner behaves himself ill the master may turn him off; *but if he discharges him for no reasons* before the voyage begins, he shall pay him *a third part of his wages*, but shall not charge it in the ship's account." (Italics ours.)

We believe that Congress in passing the statute of June 7, 1872, (8Stat. 266) had in mind the principles of maritime law embodied in the rules of law just cited and the relief afforded by R. S. 4527, was no doubt intended as temporary compensation for breach of the seamen's contract before the commencement of the voyage, and as in the rule of law last cited had no thought of the rights of the seamen after the commencement of the voyage.

We further call your Honors' attention to the authorities cited on pages 31 and 32 of counsel's Circuit Court of Appeals (petitioners') brief, viz:

"RIGHTS AND DUTIES OF MERCHANT SEAMEN," by CURTIS, BOSTON (1841).

PARSONS in VOL. 1, p. 50, "LAW OF SHIPPING" (1869).

A reading of the Laws of Shipping before the enactment of the statute, particularly Flanders, Parsons, Dixon, Abbott, will show into what confusion this question had come. It is safe to presume, therefore, that the lawmakers enacted Revised Statute 4527 to clear up that confusion and to provide an equitable immediate relief for the dismissed seamen.

We think none of the cases cited by Petitioners are in any way applicable or decisive of the question at bar. We are in full accord with the opinions of the various Courts in all the cases so cited, and it will be noted in reading the cases cited by Petitioners that where R. S. 4527 was applied or referred to, same was so applied in cases of wrongful discharge before the commencement of the voyage, and in others the seamen had not been discharged at all and therefore the statute did not apply. In other cases the statute was referred to by analogy where the voyage was of short duration and damages assessed accordingly, though the statute had no direct application.

In the case of *CALVIN v. HUNTLEY*, 178 *Mass.*, *p.* 29, the Court was concerned with the jurisdiction of seamen's claim for wages, and in no way with the interpretation of the statute as here applied.

In all of the cases on questions involving breach of the seaman's contract, after the beginning of the voyage, the Judges sitting in Courts of Equity have never applied Section 4527 of the Revised Statutes, and we do not find, and counsel cites no authorities, holding that an Admiralty Judge ever interpreted the statute (4527) to apply *to a breach of a seaman's contract* after the voyage had begun.

Rule applied by English Admiralty Courts.

In the British Trade (Asp. Mar. Cas. 16 Vol. N. S. 296) (January 21 and 28, 1924.)

The Merchants' Shipping Act of 1894 was before the Court in a case in which suit had been brought by the captain and chief engineer for wages for the entire voyage, and in passing on this case the Court said:

> "The maritime lien is not confined to wages actually earned on board ship, but may attach in respect of wages which the seaman might have earned had he been permitted to continue to serve."

In the Beaver (3 Rob. 92), Lord Stowell said, in that case, where a mariner had been put ashore on the African coast on a voyage from Liverpool to Africa and back:

> "That the wages recoverable were those due for the whole voyage."

In The Camilla (Swabey 312) (1886), Dr. Lushington applied the same rule in decreeing payment of wages

from date of discharge to the time within the contract period.

Citing the Magna Charta, 2nd Law 136; The Mary Ann, 13 L. T. Rep. 384, L. Rep. 1. A. & E. 8.

The Blessing, 3 Asp. Mar. Cases, 561.

Roscoe Admiralty Practice, 4th Edition, p. 250.

The rule applied by the English Admiralty Courts is clearly cited in *"THE ELIZABETH"*, 2 *Dods Admiralty Reports*, 403, Lord Stowell in this case said:

"Nothing can be more generally or more peremptorily laid down, than that a master discharging a seaman wrongfully is answerable for the whole wages of the voyage of that ship."

American Admiralty Decisions.

In *"THE WHITE SEAL,"* 194 *Federal*, 402, District Judge Wolverton held that libelant discharged without cause from the position of chief engineer before the end of his contract term and entitled to recover his earnings.

Dec. Dig. Seamen, No. 26.

Judge Wolverton's decision in the *WHITE SEAL* was confirmed by Circuit Court Judges Gilbert and Ross and in the decision rendered the statute (4527) is not referred to and the decree is in full accord with the decree in this case.

In the *CITY OF NEW ORLEANS*, 33 *Fed.*, 683, Judge Pardee in deciding that case made no reference to R. S. 4527 and in the case of *J. P. Leathers*, 74 *Fed.* 845, the statute was not referred to.

In the case of *WILSON v. MANHATTON CANNING COMPANY*, 210 Fed. 900, the Court in that case said:

> "The contention that R. S. 4527 applies to this case and that libelant cannot in any event recover more than one month's wages under the findings upon the facts cannot be sustained."

This section provides:

> "Any seaman who has signed an agreement and is afterwards discharged before the commencement of the voyage or before one month's wages are earned—shall be entitled to receive from the master—in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation."

In passing on the above cause District Judge Neterer held:

> "The voyage having commenced, and the libelant not having been discharged, this section has no application."

And he further stated that the "*STAGHOUND*" and "*GAMECOCK*", 97 *Fed.* 973, *the ST. PAUL*, 77 *Fed.* 998, and *Raymond v. Ella S. Thayer*, 40 *Fed.* 902, are readily distinguished. (*Staghound* and *Gamecock* relied on by petitioners here.)

In the *ALASKA STEAMSHIP COMPANY v. GILBERT*, 236 *Fed.* 715-717, the Court there held that the discharge of the seamen at a port of call who had signed for a complete voyage was improper, and a decree was rendered giving seaman full wages for the voyage, and full compensation for his expenses and return fare to port of shipment. Circuit Judge Hunt in confirming the decree of District Judge Neterer in the above case said:

> "As the opinion of the District Court clearly states the facts in this case, we affirm the decision of Judge Neterer on the merits and append his opinion, which opinion in part reads:
>
> "He has brought this action to recover the wages for the trip, expenses necessarily incurred to return to Seattle and $500.00 damages. No hours of employment were mentioned in shipping articles * * *. Under the circumstances the mate should have dealt with the libelant in a more indulgent spirit * * * I think the libelant should recover his wages for the trip, the $16.00 fare expended, and $35.00 to reimburse him for the outlay which was occasioned at Juneau, Alaska."

In *JENKINS, et al. v. UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION*, 268 *Fed.* 870, was a suit involving seamen's wages. District Judge Neterer in passing on this case made no mention of R. S. 4527, but held:

> "The seamen were discharged through no act of commission or omission which would warrant such discharged. This was not the port of final dis-

charge, and the seamen were not requested to continue on the voyage under the articles, but were requested to sign new articles for a new voyage. The vessel by its own conduct fixed the status of the men with relation to this proceeding, and they are entitled to their wages and board during detention and transportation to New York to such as desires to go to New York."

In an early admiralty case, *HUTCHINSON v. COOMBS*, *Wares Report*, 65, Judge Ware decreed wages for the whole voyage as measure of damage, and further held that the intermediate earnings of the seamen were to be deducted, not from his wages, but from the expenses of his return.

Flanders in his works on shipping, Volume 5, says:

"By Act of Congress 1825, Congress struck out directly at the unlawful discharge of seamen abroad by providing penalty for refusing to bring the seamen home. The master has a right under the general Maritime Law to discharge a seaman in a foreign port, but it must be done for a sufficient cause."

Mr. Justice Story in an early admiralty case in construing shipping articles (seaman's contract) in the case of JAMES SHEPPARD, et al. v. LEMUEL TAYLOR, reported 5th Pe ers, p. 709, passed on the rights of seamen to wages for duration of the voyage in a case of wrongful discharge. Mr. Justice Story in a long opinion which covers many points involved in admiralty law, said in part, as follows:

"The first question is whether in point of fact the libelants have sustained the allegations in the libel and petition in respect to the voyage, viz., their ignorance of the intended illicit trade * * * which is necessary to maintain their claim for wages. And we are of the opinion that the evidence upon these points is conclusive, that the seamen were the victims of an illicit voyage, for which they never intended to contract, and in which they had no voluntary participation.

"Such then being the state of facts, the law upon the subject is very clear. It is, that the seamen are entitled to full wages *from the time of their shipping on the voyage to the time of their return to the United States; deducting their advanced wages, and whatever they have earned* (if any) in any intermediate employment. This is the general rule in Courts of Admiralty in cases of this nature; where the libelant seeks nothing beyond compensation in the nature of wages. To this extent the seamen are entitled to a decree against the owners; had the ship been specifically restored. There is no doubt that the seamen might have proceeded against it in the admiralty, in a suit *in rem*, for the whole compensation due to them. They have by the Maritime Law an undisputed lien to this extent. This lien is so sacred and indelible that it has, on more than one occasion been expressly said, that it adheres to the last plank of the ship." (1st Peters Admiralty Reports.) Note 186, 195. The Neptune 1st Hagg. Admiralty Reports, 227 239."

In UNITED STATES v. CUTTIN, 1st Sumner, 304, "I think" observed JUDGE STORY:

"That the right of discharge arises only under extraordinary emergencies and in extreme cases, when otherwise the safety of the officers or crew or the ship's discipline would be put in jeopardy. The mere convenience of the master would not justify a discharge, much less offenses as could be ordinarily suppressed by the common punishment administered in sea service."

In view of the above rule of law, it is inconceivable to think that the Congress of the United States would enact a statute giving the right of discharge of a seaman without fault on his part at a port far distant from the port of departure and without sustenance or transportation, on the payment of a single month's wages to the seamen. (Wages of seamen being $18.00 per month at the time.)

In the case of *ENOCHASSON v. FREEPORT SULPHUR COMPANY, et als.*, decided by *District Judge Hutcheson* in the District Court for the Southern District of Texas, 7 Fed. Report., p. 674:

"The discharge of seamen compelled to leave the ship through illness incapacitating him, without fault on his part, does not release the ship or its owners * * * and that where a seaman during a voyage to a particular port was incapacitated by illness in service without fault on his part his right to wages was not limited to a termination of the voyage in the course of which the incapacity arose, but he was entitled to recover wages to the end of his contract, in addition to maintenance and cure up to that time."

District Judge Hutcheson in further passing on the case said:

> "These principles are that a seaman is to an extent bound to his ship in a kind of personal indenture, and the ship is in return bound to him for his wages, his maintenance, and cure. That the obligations of this indenture are mutual and continue through the term of the employment."

And so in the case of **LONGSTREET v. STEAMBOAT R. R. SPRINGER** (District Court), 4 Fed. 671, the Court there held:

> "I understand the law to be that, where a seaman is injured in service of the boat, without fault on his part, he is entitled to recover his full wages for the trip for which he has engaged and the expense incurred in his cure."

If the above principle of law is applicable to seamen who are dismissed without fault on their part and due to illness during a voyage, it certainly should be applicable to a seaman who is dismissed without fault on his part after the commencement of the voyage, especially in such a case as the one at bar.

In The Waverly (E. D. Wisconsin) Fed. Case, No. 17391, (June, 1877), Judge Dyer said, in construing R. S. No. 4527:

> "* * * The remedy given to seamen by sections 4526 and 4527 R. S. is not *exclusive* but *cumulative* merely. The provisions of Section 6 of the Act of 1790, (1st Stat., 131), are incorporated substantial-

ly into Sections 4526 and 4527 of the present Revised Statutes, it is to be observed also that the language at the end of Section 4527 is in substance identical with that at the end of section 6 of the act of 1790.

"Favorable argument may be made in favor of the proposition that it was the intention of Congress in passing that act to put seamen upon a different footing from that occupied by other parties. * * *

"There are however decisions upon the question so direct, and which emanate from sources so eminent that they can hardly be disregarded; one of these decisions is found in the case of The W. W. Wright (Case No. 9,983), and the other in the case of Wm. Jarvis (Case No. 17,697 Mass.) (Italics ours.)

Judge Sprague in that case said:

"* * * And surely we ought not to go in search of arguments for giving strained construction against the seaman of a statute which does him injustice by *curtailing the remedies* which jurisprudence of all countries give him and we must bear in mind that we are dealing with remedies for collection of debts." (Italics ours.)

We think that counsel's "THIRD POINT" is not borne out by the judicial history of R. S. 4527, particularly the decisions of the United States Courts, the English Court, or the Admiralty Courts in general, on questions involving breach of seamen's contract (shipping articles). Nor do we think that Counsels' "FIRST POINT" is

well taken in view of the history of Section R. S. 4527. Mr. Conger, the author of the bill, states: pg. 1836 Congressional Globe (1872).

> "The object of the bill, as indicted in its title, is to protect seamen by legal regulations as to the mode of their shipping and discharge, in lack of any laws now existing on the subject."

And Senator Stockton in quizzing supporters of the bill remarked: (pgs. 37, 34, C. G. 1872).

> "It is fifty pages of the code of laws to govern the merchant marine. It is an alteration of the rules of the Court of Admiralty. It is an alteration of the contracts between seamen and their employers. * * *"

On page 40 of Counsels' brief filed herein, the following significant admission is made:

> "Many of the sections were debated but Section 21 was not touched on in the debate."

And Mr. Bruns, of counsel, stated in his argument before the United States Circuit Court of Appeals that a careful search of the "Congressional Record" had been made and nothing that would assist the Court in determining the case had been found, and we fail to see where any member of Congress who participated in the preparation of the bill placed a construction on its provisions in any way contrary to the interpretation placed thereon by Judge Burns of the United States District Court, or by the three judges of the United States Circuit Court of

Appeals for the Fifth Circuit in deciding this case as they have done.

The Civil Law Rule.

Congress in passing the statute (R. S. 4527) virtually adopted the "Civil Law." Article 2749 of the Civil Code of Louisiana declares:

> "Dismissal Without Just Cause. If without any serious ground of complaint, a man should send away a laborer whose service he has hired for a certain time, before that time has expired, he shall be bound to pay such laborer the whole of the salaries which he would have been entitled to receive, had the full term of his service arrived."

The Supreme Court of Louisiana in Trefethen v. Locke, et als., reported in 16th Louisiana Annual, p. 19, in passing on Art. 2749 of the Civil Code stated:

> "This article of the Code is in the nature of a penal statute and should be strictly construed."

And in Lloyd vs. Dickson, et als., reported in 121 La., Reports pg. 919, that Court said:

> "Revised Civil Code Art. 2749 is in the nature of a penal statute, and has no application to a contract for the letting and hiring entirely unperformed in all of its parts, and that for the breach of such executory contracts only actual damages can be recovered."

The import being that where the laborer had actually performed any part of the labor for which he had hired out, that he was entitled on dismissal to his wages until the full term of his services arrived just as a master

discharging a seaman wrongfully is answerable for the whole wages of the voyage of that ship.

The Circuit Court of Appeals for the Fifth Circuit in affirming the decree in favor of libelant Adams in the United States District Court for the Eastern District of Louisiana has not in any way departed from the weight of authority as established by the decision of the United States Courts, the English Admiralty Courts, nor from the general rule in the Courts of Admiralty in cases of this nature, but has defined an important Federal statute according to well established principles of maritime law and have followed the established tenets of the Civil Law as well.

We believe a review of decided cases involving questions of breach of seamen's contracts, including the cases herein cited will disclose the fact that libelant is entitled to have his wages continue at the contract rate until the end of the voyage. That the wages for the interval of time between his forced cessation of work and the completion of the voyage should operate as liquidated damages for the wrongful breach of his contract, and it is eminently just that he should be compensated by an award of wages as liquidated damages.

The decision of the Circuit Court of Appeals for the Fifth Circuit should be affirmed.

Respectfully submitted,

EUGENE S. HAYFORD,

Counsel Libelant Respondent.

Nov. 1927.

SUPREME COURT OF THE UNITED STATES.

No. 106.—October Term, 1927.

United States Steel Products Co., Claimant and Owner of S.S. "Steel Trader," et al., Petitioners, *vs.* Donald J. Adams.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[January 3, 1928.]

Mr. Justice McReynolds delivered the opinion of the Court.

November 29, 1921, at New Orleans, La., respondent Adams signed articles for services as oiler on the "Steel Trader" during a voyage from that city to East Indian Ports and return, at $80 per month. December 12, 1921, after the voyage began and while at Port Arthur, Texas, he was discharged without fault on his part and without his consent. He received before a Shipping Commissioner the wages earned and $80.00 more. The vessel returned to New Orleans May 19, 1922. Thereafter Adams instituted this proceeding in rem wherein he sought to recover as damages the stipulated wages from December 12, 1921, to May 19, 1922, plus $2.50 per day for subsistence. The trial court granted recovery for the amount of such wages ($414.50) less $80.00, with interest from May 19, 1922, 10 Fed. (2d) 248, 250, and the Circuit Court of Appeals affirmed that action, 13 Fed. (2d) 614.

The only matter for our consideration is the proper interpretation and construction of Sec. 4527, U. S. Revised Statutes (Sec. 21, Ch. 322, Act of June 7, 1872, 17 Stat. 266) U. S. C. Title 46, Sec. 594, which follows—

> Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to

one month's wages as compensation, and may, on adducing evidence satisfactory to the court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned.

Ch. 322, Act of June 7, 1872,—sixty-eight sections—prescribes elaborate regulations concerning employment, wages, treatment and protection of seamen. *Inter-Island Steam Navigation Co.* v. *Byrne*, 239 U. S. 459, 460. Sec. 21 became Sec. 4527, R. S. without material change.

The trial court held that Sec. 4527 applies only to a wrongful discharge before commencement of the voyage. The Circuit Court of Appeals concluded that "the language of R. S. Sec. 4527 is consistent with an intention to treat the amount required to be paid to the wrongfully discharged seaman as compensation for the service already rendered by him"; and that payment thereof does not absolve from liability for breach of the shipping articles.

We think both courts adopted improper views. According to the plain language employed, the section in question applies where the discharge takes place before the commencement of the voyage or before one month's wages are earned. Also we think, in the specified circumstances, payment of wages actually earned, with an additional sum equal to one month's wages, satisfies all liability for breach of the contract of employment by wrongful discharge. The legislation was intended to afford seamen a simple, summary method of establishing and enforcing damages.

Mr. Conger, who reported the bill, which later became the Act of June 7, 1872, for the committee and had charge of it in the House of Representatives, there stated—

> "The bill is substantially the Shipping-Commissioner's Act of England [The British Merchant Shipping Act of 1854] with such changes as have been deemed necessary to adapt it to this country. . . ." Congressional Globe of March 20, 1872, p. 1836.

The Shipping Act of 1854 provides—

> Sec. 167. Any seaman who has signed an agreement, and is afterwards discharged before the commencement of the voyage, or before one month's wages are earned, without fault on his part justifying such discharge and without his consent, shall be entitled to receive from the master or owner, in ad-

dition to any wages he may have earned, due compensation for the damage thereby caused to him, not exceeding one month's wages, and may, on adducing such evidence as the Court hearing the case deems satisfactory of his having been so improperly discharged as aforesaid, recover such compensation as if it were wages duly earned.*

Speaking of Sec. 167 in *Tindle* v. *Davison*, Queen's Bench Div. 1892, 66 L. T. N. S. 372, 374, Wright, J., said:

". . . The meaning of the section is that, when a seaman is improperly discharged, he is to have due compensation up to a month's wages in lieu of his right of action, unless he has earned a month's wages, in which case the section does not apply."

The word *compensation*, in Sec. 4527, distinctly indicates that payment of a sum equal to one month's wages was intended to constitute the remedy for invasion of the seaman's right through breach of his contract of employment in the circumstances specified. "Damages consist in compensation for loss sustained. . . . By the general system of our law, for every invasion of right there is a remedy, and that remedy is *compensation*. This compensation is furnished in the damages which are awarded." Sedgwick's Damages, 9th Edition, Vol. 1, page 24. See also *Bauman* v. *Ross*, 167 U. S. 548. The provision that such sum may be recovered "as if it were wages duly earned" permits the seaman to enforce payment by the special and summary methods provided for collecting his ordinary wages.

In *Calvin* v. *Huntley* (1901) 178 Mass. 29, 32—we think the Supreme Court of Massachusetts properly interpreted Sec. 4527, and in respect of it rightly said—

It speaks not of punishment but of compensation, its object is to protect the seaman from loss rather than to punish the

*Sec. 162, British Merchant Shipping Act of 1894, which corresponds to Sec. 167, Act of 1854 provides:—"If a seaman, having signed an agreement, is discharged otherwise than in accordance with the terms thereof before the commencement of the voyage, or before one month's wages are earned, without fault on his part justifying that discharge, and without his consent, he shall be entitled to receive from the master or owner, in addition to any wages he may have earned, due compensation for the damage caused to him by the discharge not exceeding one month's wages, and may recover that compensation as if it were wages duly earned."

master for discharging him. The remedy is given to the seaman alone, and its plain purpose is to furnish a clear and well defined rule of damages as between him and the master for a breach of contract in which the seaman and the master or owner are the only persons interested. . . .

Nor does the rule of damages seem unreasonable. The shipping contract calls upon the seaman to go to various places, sometimes far from home, and it may be, for instance as in this case was the actual fact, that he may be discharged in a port distant from that where he signed the articles, or where he cannot immediately secure any other employment on board ship or elsewhere, and that in all fairness he should recover more than the amount due him for wages earned. Hence it might be deemed advisable to have this indefinite element made definite by a general law with reference to which the parties may conclusively be presumed to have contracted, and which therefore should be taken to be the law of the contract. The object of the statute is not to punish but to provide a reasonable rule of compensation for a breach of contract. We think the statute not penal but remedial. . . .

The decree of the District Court must be reversed. The cause will be remanded there for further proceedings in conformity with this opinion.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.